# APPENDIX



IN THE

# Supreme Court of the United States

OCTOBER TERM, 1979

**Nos. 79-4, 79-5 and 79-491**

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JASPER F. WILLIAMS AND EUGENE F. DIAMOND,
*Appellants,*

*v.*

DAVID ZBARAZ, et al.,
*Appellees.*

JEFFREY C. MILLER, Acting Director, Illinois Department of Public Aid, et al.,
*Appellants,*

*v.*

DAVID ZBARAZ, et al.,
*Appellees.*

UNITED STATES,
*Appellant,*

*v.*

DAVID ZBARAZ, et al.,
*Appellees.*

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**APPEAL TO THE SUPREME COURT OF THE UNITED STATES FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

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Jurisdictional Statements of Williams and Miller filed July 2, 1979.
Jurisdictional Statement of United States filed September 21, 1979.
Jurisdiction Postponed until Hearing on Merits: November 26, 1979.

## INDEX

## CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

| Date | Proceedings |
|---|---|
| 12/6/77 | Filed complaint. |
| 12/6/77 | Filed Plaintiffs' Motion for Temporary Restraining Order and/or Preliminary Injunction, with attachments. |
| 12/6/77 | Filed Plaintiffs' Memorandum in Support of Motion for Temporary Restraining Order and/or Preliminary Injunction with attachments. |
| 12/6/77 | Filed Plaintiffs' Motion to Proceed As a Class. |
| 12/9/77 | Filed Plaintiffs' Supplemental Memorandum in Support of Motion for Temporary Restraining Order and/or Preliminary Injunction, and attachments. |
| 12/12/77 | Filed Designation of Affidavits and Statistical Data submitted by Plaintiffs in Support of Motion for Temporary Restraining Order and/or Preliminary Injunction. |
| 12/12/77 | Filed Affidavit of Oren Richard Depp, III, M.D., with attachments. |
| 12/12/77 | Filed Affidavit of Louis G. Keith, M.D., with attachments |
| 12/12/77 | Filed Defendant's Response in Opposition to Plaintiffs' Motion for Temporary Restraining Order and/or Preliminary Injunction, with attachments. |
| 12/13/77 | Filed Petition to Intervene of Jasper F. Williams, M.D., and Eugene F. Diamond, M.D., with attachments. |
| 12/15/77 | Filed Plaintiffs' Reply Memorandum to Defendant's Memorandum in Opposition to Plaintiffs' Motion for Temporary Restraining Order and/or Preliminary Injunction. |
| 12/16/77 | Filed Intervening Defendants' Answer to the Complaint. |
| 12/16/77 | Filed Objection by Intervening Defendants to Motion for Temporary Restraining Order and Preliminary Injunction; and Memorandum in support of Intervening Defendants' Objection to Plaintiffs' Motion for Temporary Restraining Order and/or Preliminary Injunction, with attachments. |

| Date | Proceedings |
|---|---|
| 12/21/77 | Filed Plaintiffs' Motion for Injunction Pending Appeal. |
| 12/22/77 | Enter Order dated December 21, 1977: Plaintiffs' Motion for an Injunction Pending Appeal is denied—Kirkland, J. |
| J. | |
| 12/22/77 | Filed Plaintiffs' Notice of Appeal and Designation of the Record on Appeal. |
| 1/10/78 | Filed Petition for Intervention as Party-Defendants; and Motion for Ruling on Petition to Intervene. |
| 3/16/78 | Filed Brief of Plaintiffs-Appellants (in U.S. Court of Appeals, 7th Circuit, No. 77-2290). |
| 3/16/78 | Filed Brief of Defendant Appellee (the U.S. Court of Appeals, 7th Circuit, No. 77-2290). |
| 3/16/78 | Filed Motion for Leave to File Brief Amicus Curiae and Brief Amicus Curiae of Jasper F. Williams, M.D., and Eugene F. Diamond, M.D., (U.S. Court of Appeals, 7th Circuit, No. 77-2290). |
| 3/16/78 | Filed Addendum to Brief of Plaintiffs-Appellants (U.S. Court of Appeals, 7th Circuit, No. 77-2290). |
| 3/16/78 | Filed Reply Brief of Plaintiffs-Appellants (U.S. Court of Appeals, 7th Circuit, No. 77-2290). |
| 3/16/78 | Filed Plaintiffs' Motion for a Temporary Restraining Order, with Exhibits A and B. |
| 3/16/78 | Filed Defendant's Motion to Supplement the District Court Record with Defendant's Appellate Brief. |
| 3/21/78 | Filed Defendant's Answer re: Complaint. |
| 3/21/78 | Filed Plaintiffs' Renewed Motion to Proceed as a Class. |
| 3/21/78 | Filed Defendant's Motion for Declaration that No Notice to Recipients is Required as a Result of the Dissolution of the Injunction Pending Appeal. |
| 3/28/78 | Filed Plaintiffs' Memorandum in Support of Motion to Proceed as a Class, Affidavit of Martin Motew, Affidavit of Zbaraz, Affidavit of Rosenow, Affidavit of Louis G. Keith. |



| Date | Proceedings |
|---|---|
| 4/13/78 | Filed Plaintiffs' Motion for Summary Judgment. |
| 4/13/78 | Filed Plaintiffs' Motion to Enjoin Defendant from Implementing P.A. 80-1091 without Providing Adequate Notice to Recipients. |
| 4/13/78 | Filed Defendant's Motion to Withdraw Motion for Declaration that No Notice to Recipients is Required to Implement P.A. 80-1091, with Affidavit of David A. Rakov. |
| 4/14/78 | Enter Order dated April 13, 1978: Leave granted Defendant to Withdraw its Motion for Declaration that No Notice to Recipients is Required to Implement P.A. 80-1091—Kirkland, J. |
| 4/14/78 | Filed Defendant's Response to Plaintiffs' Motion to Enjoin Defendants from Implementing P.A. 80-1091 and without Providing Adequate Notice to Recipients, with Exhibits A, B, & C attached. |
| 4/19/78 | Filed Applicants for Intervention's Reply to Plaintiffs' Memorandum in Opposition to Application for Intervention. |
| 4/11/78 | Filed Opinion from U.S.C.A, 7th Circuit, 77-2290. |
| 4/11/78 | Filed Certified Copy of Judgment Order from U.S.C.A., 7th Cir. March 15, 1978 Reversing and Remanding for Expedited Consideration. |
| 4/25/78 | Filed Defendant's Motion for Summary Judgment. |
| 4/25/78 | Filed Plaintiff Jane Doe's Motion for a Preliminary Injunction and Summary Judgment, with Affidavit of David Zbaraz. |
| 4/25/78 | Filed Plaintiffs' Motion for Leave to have Jane Doe Joined as Party Plaintiff, for Leave to have Her Proceed under a Pseudonym and for Leave to File a Supplemental Pleading with Affidavit of Zbaraz. |
| 4/25/78 | Filed Plaintiffs' Amended and Supplemental Pleading. |
| 4/25/78 | Filed Plaintiff Jane Doe's Motion for Class Certification. |
| 4/26/78 | Filed Affidavit of Jasper F. Williams. |

| Date | Proceedings |
|---|---|
| 4/28/78 | Filed Movants for Intervention's Motion for Summary Judgment. |
| 5/1/78 | Enter Order dated April 25, 1978: Enter Order granting Plaintiffs' Motion for Leave to have Jane Doe Joined as a Party Plaintiff and for Leave to File a Supplemental Pleading —Kirkland, J. |
| 5/16/78 | Enter Order dated May 15, 1978: Defendant's Motion to Dismiss for Want of Jurisdiction is denied. The Motion to Intervene by Jasper F. Williams, M.D., and Eugene F. Diamond, M.D., is granted. Plaintiffs' Motions to Proceed as a Class are granted as above described. Plaintiffs' Motion for Summary Judgment is denied. The Court's resolution of prior motions makes consideration of the parties' arguments regarding notice requirements unnecessary—(DRAFT) —Kirkland, J. |
| 5/19/78 | Enter Judgment pursuant to Rule 58. |
| 5/23/78 | Enter Order dated May 23, 1978: Defendant's Motion for a Stay Pending Appeal is denied. Intervenors' Motion for a Stay Pending Appeal is also denied—Kirkland, J. |
| 5/23/78 | Filed Plaintiffs' Motion for Entry of Final Judgment and Order. |
| 5/25/78 | Filed Plaintiffs' Motion to Alter or Amend Final Judgment. |
| 5/31/78 | Filed Defendant Arthur F. Quern's Memorandum in Opposition to Plaintiffs' Motion for Entry of Final Judgment and Order. |
| 6/19/78 | Enter Order dated June 13, 1978: Enter Amended Final Judgment and Order (DRAFT)—Kirkland, J. |
| 6/19/78 | Enter Judgment pursuant to Rule 58. |
| 6/22/78 | Filed Defendant Quern's Motion for Partial Stay of the Final Judgment and Order of June 13, 1978. |
| 6/23/78 | Enter Order dated June 22, 1978: Defendant Quern's Motion for Partial Stay of Final Judgment and Order of June 13, 1978 is DENIED.—Kirkland, J. |



| Date | Proceedings |
|---|---|
| 7/13/78 | Filed Defendant's Notice of Appeal from the Final Judgment entered May 19, 1978 granting Plaintiffs' Motion for Summary Judgment. |
| 7/13/78 | Filed Intervening Defendants' Notice of Appeal from the Amended Final Judgment entered June 13, 1978 granting Plaintiffs' Motion for Summary Judgment. |
| 7/26/78 | Filed Plaintiffs' Cross-Appeal re: Order of June 13, 1978 and Rule 58 Judgment, Intervention as Defendants by Jasper Williams and Eugene Diamond, M.D. |
| 2/14/79 | Filed 2-13-79 Opinion Nos. 78-1669, 78-1709, 78-1787, 78-1890, 78-1891, 78-2029, from U.S. Court of Appeals 7th Circuit. |
| 2/14/79 | Filed 2-13-79 Certified copy of Order from U.S. Court of Appeals 7th Cir., dated February 13, 1979. . . . (I)T is ordered and adjudged by this Court that the judgment of the said district Court in these causes appealed from be and the same is hereby VACATED, with costs, and REMANDED, in accordance with the opinion of this Court filed this date. |
| 2/15/79 | Enter order dated February 15, 1979, modifying permanent injunction pursuant to the mandate of the Court of Appeals for the Seventh Circuit. |
| 2/23/79 | Filed 2-22-79 Plaintiffs' Interrogatories and Request for the Production of Documents. |
| 2/23/79 | Enter order dated February 22, 1979 pursuant to 28 U.S.C. § 2403(a), this Court hereby certifying to the Attorney General of the United States that the constitutionality of an Act of Congress has been drawn into question. —Kirkland, J. |
| 3/6/79 | Filed 3-6-79 Notice of Filing, and Defendant Quern's Response to Plaintiffs' Interrogatories and Request for Production of Documents. |
| 3/8/79 | Filed 3-8-79 U.S. Dept. of Justice's correspondence dated March 7, 1979 to Judge Kirkland requesting permission to intervene pursuant to 28 U.S.C. § 2403(a). |
| 3/8/79 | Enter order dated March 8, 1979 granting the request of the United States for permission to intervene pursuant to 28 U.S.C. § 2403(a) —Kirkland, J. |

| Date | Proceedings |
|---|---|
| 3/23/79 | Filed 3-22-79 Intervening Defendants' Motion for Summary Judgment. |
| 3/23/79 | Filed 3-22-79 Defendant's Brief in Support of Motion for Summary Judgment. |
| 3/23/79 | Filed 3-22-79 Plaintiffs' Motion for Summary Judgment and for an Injunction. |
| 3/23/79 | Filed 3-22-79 Memorandum in Support of Plaintiffs' Motion for Summary Judgment, and for an Injunction. |
| 3/23/79 | Filed 3-22-79 Exhibits to Memorandum in Support of Plaintiffs' Motion for Summary Judgment and for an Injunction. |
| 3/23/79 | Filed 3-22-79 Defendant Quern's Memorandum of Law on the Constitutional Questions. |
| 3/26/79 | Filed 3-26-79 Federal Defendant-Intervenor's Memorandum in Support of the Constitutionality of the Hyde Amendment. |
| 3/30/79 | Filed 3-30-79 State Defendant's Motion for Summary Judgment. |
| 4/3/79 | Filed 4-2-79 letter (undated) from U.S. Department of Justice regarding Motion for Summary Judgment. |
| 4/3/79 | Filed 4-3-79 Reply Brief of Intervening Defendants Jasper F. Williams, M.D., and Eugene F. Diamond, M.D., re: Illinois' refusal to fund all "Medically Necessary" Abortions. |
| 4/3/79 | Filed 4-3-79 Defendant Quern's Reply Brief. |
| 4/3/79 | Filed 4-3-79 Plaintiffs' Reply Memorandum in Support of Motion for Summary Judgment and for an Injunction. |
| 4/11/79 | Filed 4-11-79 Federal Defendant-Intervenor's Reply Memorandum. |
| 4/19/79 | Filed 4-19-79 Memorandum of Defendants Jasper F. Williams, M.D., and Eugene F. Diamond, M.D., in Opposition to Plaintiffs' Motion for Temporary Restraining Order or Preliminary Injunction. |
| 4/24/79 | Filed 4-20-79 Plaintiffs' Motion for Temporary Restraining Order or Preliminary Injunction. |
| 4/24/79 | Filed 4-20-79 Memorandum of Defendants Jasper F. Williams, M.D., and Eugene F. Diamond, M.D., in Opposition to Plaintiffs' Motion for Temporary Restraining Order or Preliminary Injunction. |



| Date | Proceedings |
|---|---|
| 4/24/79 | Filed 4-20-79 Defendant's Memorandum in Opposition to Motion for Temporary Restraining Order and/or Preliminary Injunction. |
| 4/30/79 | Enter Order dated April 29, 1979: Partial Summary Judgment is granted to Plaintiffs and Partial Summary Judgment is granted to Defendants (DRAFT)—Grady, J. |
| 4/30/79 | Filed 4-30-79 Defendants' Motion for Stay Pending Appeal. |
| 4/30/79 | Filed 4-30-79 Defendant Quern's Motion to Require Federal Reimbursement for All Medically Necessary Abortions. |
| 4/30/79 | Enter Order dated April 30, 1979: Hearing held on proposed Order. Motion of all Defendants for Stay Pending Appeal, denied. Motion by Defendant Quern to require federal reimbursement entered and taken under advisement. Enter Final Judgment and Order (DRAFT) —Grady, J. |
| 4/30/79 | Filed 4-30-79 Intervening Defendants' Motion for Stay. |
| 4/30/79 | Enter Order dated April 30, 1979: Motion by Intervening Defendants for Stay Pending Final Outcome of this Case Pending Appeal is denied —Grady, J. |
| 5/2/79 | Filed 5-2-79 Intervening Defendants' Notice of Appeal (Appeal to the U.S. Supreme Court from order of 4/30/79). |
| 5/8/79 | Filed 5-8-79 Defendant's Amended Notice of Appeal. |
| 5/29/79 | Filed 5-29-79 Federal Intervenor's Notice of Appeal to the U.S. Supreme Court. |

## OPINIONS, DECISIONS, JUDGMENTS AND ORDERS APPEARING IN APPENDICES TO JURISDICTIONAL STATEMENTS

The following opinions, decisions, judgments and orders have been omitted in printing this appendix because they appear on the following pages in the appendices to the printed Jurisdictional Statements:

I. Appendix of Appellant Miller:



II. Appendix of Appellant United States of America:





## IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

| | |
|---|---|
| **DAVID ZBARAZ, M.D., MARTIN MOTEW, M.D., on their own behalf and on behalf of all others similarly situated; CHICAGO WELFARE RIGHTS ORGANIZATION, an Illinois not-for-profit corporation,** ***Plaintiffs,*** **vs. ARTHUR F. QUERN; Director of the Illinois Department of Public Aid,** ***Defendant.*** | No. 77 C 4452 |

### COMPLAINT

1. This action is brought as a class action. Plaintiffs include two physicians who as part of their practice regularly provide medically necessary abortions to indigent women. They seek to enjoin enforcement of Illinois statute P.A.80—(H.B. 333) effective December 15, 1977, claiming that it denies them and their indigent women patients needing medically necessary abortions their rights under the Social Security Act, and the Ninth and Fourteenth Amendments to the United States Constitution. H.B. 333 prohibits state public assistance payments for medically necessary abortions for women otherwise eligible for medical assistance because of their indigency. At the same time Illinois provides public assistance payments for all other types of medically necessary services to these women and all other eligible indigent persons.

2. This Court has jurisdiction over this action under:

(a) 28 U.S.C. 1343(3), (4); and

(b) 28 U.S.C. § 1331.

The amount in controversy in this action exceeds $10,000, exclusive of interests and costs.

3. This action is authorized by 42 U.S.C. § 1983. Declaratory relief is authorized by 28 U.S.C. § 2201 and F.R.C.P. 57.

4. Plaintiff Martin Motew, M.D.:

(a) is a United States Citizen, and a resident of Chicago, Illinois;

(b) is a registered and licensed physician in Illinois, a board certified obstetrician and gynecologist, a member of the Department of Obstetrics and Gynecology at Michael Reese Hospital, Chicago, Illinois and a Clinical Instructor of Obstetrics and Gynecology at the University of Chicago.

(c) regularly performs and desires to continue to perform medically necessary abortions for pregnant women patients of his who, because of their indigency, are eligible for medical assistance under one of the medical assistance programs which Illinois funds pursuant to Ill. Rev. Stat. ch. 23, Art. V-VII (hereinafter "indigent women").

5. Plaintiff David Zbaraz, M.D.:

(a) is a United States Citizen and a resident of Chicago, Illinois;

(b) is a registered and licensed physician in Illinois, a board certified obstetrician and gynecologist, a member of the Department of Obstetrics and Gynecology at Michael Reese Hospital, Chicago, Illinois, and a Clinical Professor of Obstetrics and Gynecology at the University of Chicago;

(c) regularly performs and desires to continue to perform medically necessary abortions for his indigent women patients.

6. Plaintiffs Motew and Zbaraz bring this action as a class action on their own behalf and on behalf of all others similarly situated, pursuant to F.R.C.P. 23(a), (b)(2). The class is



defined as all registered and licensed physicians in Illinois who are certified to obtain reimbursement for necessary medical services rendered to, and who perform medically necessary abortions for, persons eligible for medical services under the Illinois medical assistance programs as defined in paragraph 11. The class is hereinafter referred to as the "physician class." It is so numerous (exceeding 200 persons) that joinder of all members is impractical; there are questions of law and fact common to the class; the claims of the named plaintiffs are typical of the claims of the class, and the named plaintiffs will fairly and adequately protect the interests of the class. The defendant has acted and is acting on grounds generally applicable to the class, thereby making appropriate final injunctive and declaratory relief, with respect to the class as a whole. Named plaintiffs and members of the physician class also assert the rights of all their pregnant women patients in Illinois eligible under the Illinois medical assistance programs who are denied assistance for abortions pursuant to H.B. 333, and are thereby unable to secure or are impeded from securing medically necessary abortions which they seek. These pregnant women are hereinafter referred to as "aggrieved women patients."

7. Plaintiff Chicago Welfare Rights Organization ("CWRO") is an Illinois not-for-profit corporation consisting of, and operated by, persons eligible for federal and/or Illinois state public assistance benefits, including benefits under the Illinois medical assistance programs. The purpose of the organization is to assist its members by, *inter alia*, advising them and helping them vindicate their legal rights, including rights under the United States Constitution and Social Security Act. Its members, all of whom depend on the Illinois medical assistance programs to meet their medical needs, include those for whom abortions have been and will be medically necessary and who are imminently threatened with denial of assistance for abortions pursuant to H.B. 333 and thereby imminently face being unable to secure or being impeded from securing medi-

cally necessary abortions which they seek. The group of aggrieved women patients include or will include all such CWRO members. CWRO represents its own interests and those of all such members.

8. Defendant Arthur F. Quern is Director of the Illinois Department of Public Aid ("IDPA"), the state agency charged with administration of medical assistance programs under the Illinois Public Aid Code, Ill. Rev. Stat. ch. 23 Art. V-VII. As such he is charged with enforcing, and is enforcing, H.B. 333.

9. The Medicaid program, Title XIX of the Social Security Act, 42 U.S.C. § 1396 *et seq.*, is a cooperative federal-state medical assistance program providing for medical services to certain families and individuals whose income and resources are insufficient to meet the costs of necessary medical care and services. Illinois participates in the Medicaid program. Under the program the federal government contributes a substantial share of the cost of providing necessary medical care and services, while the state contributes the remainder. States participating in the Medicaid program must comply with the Social Security Act provisions and federal regulations governing the Medicaid program.

10. Under its Medicaid program, Illinois must—

> cover all medically necessary services for eligible recipients, required to be provided to them pursuant to 42 U.S.C. § 1396a(a) (13).
>
> . . . include reasonable standards . . . for determining eligibility for and the extent of medical assistance under the plans which . . . are consistent with the objectives of this [Medicaid program] . . . 42 U.S.C 1396a(a)(17)
>
> provide such safeguards as may be necessary to assure that . . . care and services will be provided in a manner consistent with . . . the best interests of the recipients. 42 U.S.C. § 1396a(a)(19)
>
> [provide] standards and methods that the state will use to assure that medical or remedial care and services provided to recipients of medical assistance are of high quality. 42 U.S.C. § 1396a(a)(22)(D)



> Specify the amount and/or duration of each item of medical and remedial care and services that will be provided . . . Such items must be sufficient in amount, duration and scope to reasonably achieve their purpose. With respect to the required services for . . . the State may not arbitrarily deny or reduce the amount of duration or scope of, such services to an otherwise eligible individual solely because of the diagnosis, type of illness or condition. Appropriate limits may be placed on services based on such criteria as medical necessity . . .
>
> 42 C.F.R. § 449.10(a)(5)(i) [former 45 C.F.R. §§ 249.10(a)(5)(i)]

11. Illinois has also established two medical assistance programs for persons in Illinois who are ineligible to participate in the Medicaid program. These programs provide payments for necessary medical care and services as follows:

> (a) The State General Assistance Program ("GA"), Ill. Rev. Stat. ch. 23, 6-1 *et seq.*, provides such payments on behalf of persons who qualify for and receive cash assistance benefits under the State-funded General Assistance Program;
>
> (b) The Aid to the Medically Indigent Program ("AMI"), Ill. Rev. Stat. ch. 23 §§ 7-1 *et seq.*, provides such payments on behalf of persons in Illinois whose income is sufficient to disqualify them from participation in a state or local General Assistance Program, but is insufficient to meet the costs of their necessary medical care and services.

The Medicaid, GA and AMI programs are herein collectively referred to as the "Illinois medical assistance programs."

12. Illinois has statutorily stated the purpose of the Illinois medical assistance programs to be as follows:

> *Medicaid*
>
> to provide a program of essential medical care and rehabilitative services for [eligible] persons . . . Ill. Rev. Stat. ch.22 § 5-1.

*General Assistance*

> [to provide] any necessary treatment, care and supplies required because of illness or disability . . . Ill. Rev. Stat. ch.23 § 6.1.

*Aid to the Medically Indigent*

> "[to provide] Aid in meeting the costs of necessary medical, dental, hospital, boarding or nursing care . . ." Ill. Rev. Stat. ch.23 § 7-1.

13. Under the Illinois medical assistance programs, medical providers such as physicians, hospitals and clinics are entitled to reimbursement for the cost of "covered" medical services rendered to patients eligible under that program pursuant to 42 U.S.C. § 1396d(Medicaid), and Ill. Rev. Stat. ch.23 §§ 6-2(G.A.) and 7-1(AMI).

14. H.B. 333 amends the Illinois Public Aid Code Ill. Rev. Stat. ch.23 Art. V-VII to:

> eliminate abortions as medical assistance for which payment [under the Illinois medical assistance programs] will be authorized, unless in the opinion of a physician, such procedures are necessary for the preservation of the life of the woman.

It also eliminates "induced miscarriages" or "premature births" as medical services for which payment will be authorized, except for those necessary for the "preservation of life of the mother" and "except [for] an induced premature birth intended to produce a live viable child . . . [where] such procedure is necessary for the health of the mother or her unborn child." A copy of the amendment is attached hereto as Exhibit A. As used herein, the term "medically necessary abortions" refers to those therapeutic abortions for which H.B. 333 denies reimbursement to members of the physician class and other medical providers. (The term does not include elective abortions: insofar as H.B. 333 denies reimbursement for elective abortions, plaintiffs do not claim that provision to be illegal.)



15. Except for medically necessary abortions, the Illinois Medicaid program "covers" medically necessary services of the following kinds: (1) inpatient hospital services; (2) outpatient hospital services; (3) other laboratory and X-ray services; (4) skilled nursing facility services; (5) family planning services and supplies; (6) physicians' services; (7) medical care, or any other type of remedial care recognized under State law; (8) home health care services; (9) private duty nursing services; (10) clinic services; (11) dental services; (12) physical therapy and related services; (13) prescribed drugs, dentures, and prosthetic devices; (14) other diagnostic, screening, preventive, and rehabilitative services. Illinois provides comprehensive coverage for recipients under the GA and AMI programs comparable to that available under its Medicaid program.

16. Defendant Quern is currently enforcing H.B. 333 to deny reimbursement under the Illinois medical assistance program for all medically necessary abortions to (a) plaintiffs Motew and Zbaraz and all other members of the physician class (b) hospitals and clinics and (c) all other medical providers.

17. As long as Illinois reimbursed them for performing medically necessary abortions for indigent pregnant women, plaintiffs Motew and Zbaraz offered and performed such medically necessary abortions for such patients. They wish to continue providing medically necessary abortions for such patients.

18. For the indefinite future a large number of indigent pregnant women patients of Plaintiffs Motew and Zbaraz and other members of the physician class will require, and were it not for H.B. 333 would seek and obtain, medically necessary abortions other than those necessary for the preservation of their lives, but because of H.B. 333 will not seek, or, if they do seek, will not obtain such medically necessary abortions, thus endangering their health and lives.

19. The distinction required by H.B. 333 between abortions necessary for the preservation of the life of the women seeking them, and abortions necessary for the preservation of the health of the women seeking them is so vague, indefinite and uncertain that plaintiffs Motew, Zbaraz and members of the physician class are and will be unable in many instances reasonably to draw and apply the distinction.

20. The distinction required by H.B. 333 is so vague, indefinite and uncertain, that some aggrieved women patients for whom abortions are and will be necessary to preserve their lives, are and will be unable to secure such abortions.

21. H.B. 333, on its face, and as applied denies aggrieved women patients eligible for Medicaid, financial assistance for medically necessary abortions, and as such violates their rights under 42 U.S.C. § 1396a(a)(13)(17)(19)(22)(D), 42 C.F.R. § 449.10(a)(5)(i), and other implementing federal regulations.

22. H.B. 333, on its face, and as applied, deprives aggrieved women patients of rights guaranteed by the due process and equal protection clauses of the Fourteenth Amendment in that:

(a) its purpose is to interfere with and preclude the exercise of their protected privacy rights to make decisions regarding and to secure medically necessary abortions on the basis of private deliberation and consultation with and advice from their physicians.

(b) its effect is to infringe their protected privacy rights to secure medically necessary abortions, on the basis of private deliberation and consultation with and advice from their physicians to a degree not justified by any compelling or even minimally legitimate state interest;

(c) the distinction it makes between indigent persons needing medically necessary services (including all medically necessary services for women related to pregnancy), except medically necessary abortions, and indigent women needing medically necessary abortions, is not rationally



related to the purposes of the Illinois medical assistance programs, or to any other constitutionally permissible purpose;

(d) it constitutes an establishment of religion, and prohibits the free exercise thereof, in violation of the First Amendment to the Constitution, made applicable to the states by the Fourteenth Amendment.

23. H.B. 333, on its face and as applied, denies aggrieved women patients rights retained by them under the Ninth Amendment to the United States Constitution by:

(a) abridging their freedom of choice about decisions relating to, and their right of privacy concerning, procreation, to a degree not justified by any compelling or even minimally legitimate state interest;

(b) abridging their freedom to care for their health and person, and freedom from bodily restraint and compulsion, to a degree not justified by any compelling or even minimally legitimate state interest.

24. H.B. 333, on its face and as applied, denies plaintiffs Motew, Zbaraz, and all members of the physician class, reimbursement for necessary medical services rendered to their indigent women patients eligible for Medicaid, and interferes with their professional medical judgment as to the medically necessary and appropriate treatment of, and treatment in the best interests of such patients and as such violates their rights under 42 U.S.C. § 1396a(a)(13)(17)(19)(22)(D), 42 U.S.C. § 1396d, 42 C.F.R. §§ 449.10(a)(5)(i), and other implementing federal regulations.

25. H.B. 333, on its face and as applied, deprives plaintiffs Motew, Zbaraz and all members of the physician class of rights guaranteed by the equal protection and due process clauses of the Fourteenth Amendment in that:

(a) it impinges upon their rights to practice medicine according to professional medical judgment as to the medically appropriate and necessary treatment of their indigent women patients;

(b) the distinction it makes between physicians rendering medically necessary services for their indigent patients (including all medically necessary services for indigent women patients related to pregnancy) except medically necessary abortions, and physicians rendering medically necessary abortions is not rationally related to the purposes of the Illinois medical assistance programs, or to any other constitutionally permissible purpose.

26. H.B. 333, on its face and as applied, violates rights of plaintiffs Motew, Zbaraz, and all members of the physician class retained by them under the Ninth Amendment to the United States Constitution, in that it interferes with their freedom of choice relating to, and the free exercise of, their medical judgment as to appropriate and necessary medical treatment of their patients.

27. Unless defendant is restrained from the enforcement of H.B. 333, the aggrieved women patients, plaintiffs Motew and Zbaraz, and all members of the physician class will suffer irreparable injury.

28. There is no adequate remedy at law.

**PRAYER FOR RELIEF**

Wherefore, plaintiffs pray that this Court;

A. Declare that H.B. 333, on its face, and as applied violates the rights of aggrieved women patients eligible for Medicaid, under 42 U.S.C. §§ 1396a(13)(17)(19)(22)(D) and 42 C.F.R. § 449.10(a)(5).

B. Declare that H.B. 333, on its face, and as applied violates plaintiffs Motew, Zbaraz and all members of the physician class their rights under 42 U.S.C. § 1396a (a)(13)(17)(19)(22)(D), § 1396d, and 42 C.F.R. § 449.10 (a)(5).



C. Declare that H.B. 333, on its face, and as applied, violates the rights of aggrieved women patients, and plaintiffs Motew, Zbaraz, and all members of the physician class under the due process and equal-protection clauses of the Fourteenth Amendment and the Ninth Amendment to the United States Constitution.

D. Preliminarily and permanently enjoin defendant, his agents, his employees and all persons in active concert with them, from enforcing H.B. 333, or otherwise denying plaintiffs Motew, Zbaraz and members of the physician class, or any aggrieved woman patient payment with respect to the rendition of medical services related to medically necessary abortions.

E. Grant plaintiffs such other and further relief as it may deem appropriate, including attorneys' fees.

/s/ ROBERT E. LEHRER
One of Plaintiffs' Attorneys

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**80th GENERAL ASSEMBLY**

**STATE OF ILLINOIS**

**1977 and 1978**

INTRODUCED February 16, 1977, BY Leinenweber—Bradley, Collins, Kelly, Jack Davis, Tuerk, Jane Barnes, Beatty, Bennett, Bluthardt, Boucek, Don Brummet, Capparelli, Christensen, Conti, Cunningham, Darrow, Deuster, DiPrima, Domico, Doyle, John Dunn, Ebbesen, Giglio, Giorgi, Griesheimer, Dan Houlihan, Hudson, Huskey, Johnson, Kent, Kornowicz, Kosinski, Kozubowski, Kucharski, Lauer, Leverenz, Luft, Madigan, Mahar, Mautino, McAvoy, McBroom, McCourt, Meyer, Miller, Molloy, Mulcahey, Murphy, Neff, Pechous, Pullen, Reilly, Ryan, Schlickman, Schuneman, Sharp, C. M. Stiehl, Sumner, Terzich, Totten, Van Duyne, VonBoeckman, Waddell, Wall, Walsh, Williams, Winchester, Wolf and Yourell.

SYNOPSIS: (Ch. 23, pars. 5-5, 6-1, 7-1)

Amends the Illinois Public Aid Code to eliminate abortions as medical assistance for which payment will be authorized, unless in the opinion of a physician, such procedures are necessary for the preservation of the life of the woman.

AN ACT to amend Sections 5-5, 6-1 and 7-1 of "The Illinois Public Aid Code", approved April 11, 1967, as amended.

*Be it enacted by the People of the State of Illinois, represented in the General Assembly:*

Section 1. Sections 5-5, 6-1 and 7-1 of "The Illinois Public Aid Code", approved April 11, 1967, as amended, are amended, the amended Sections to read as follows:

(Ch. 23, par. 5-5)

Sec. 5-5. Medical services.) The Illinois Department, by rule, shall determine the quantity and quality of the

medical assistance for which payment will be authorized, and the medical services to be provided, which may include all or part of the following: (1) inpatient hospital services; (2) outpatient hospital services; (3) other laboratory and X-ray services; (4) skilled nursing home services; (5) physicians' services whether furnished in the office, the patient's home, a hospital, a skilled nursing home, or elsewhere; (6) medical care, or any other type of remedial care furnished by licensed practitioners; (7) home health care services; (8) private duty nursing service; (9) clinic services; (10) dental services; (11) physical therapy and related services; (12) prescribed drugs, dentures, and prosthetic devices; and eyeglasses prescribed by a physician skilled in the diseases of the eye, or by an optometrist, whichever the person may select; (13) other diagnostic, screening, preventive, and rehabilitative services; (14) transportation and such other expenses as may be necessary; (15) any other medical care, and any other type of remedial care recognized under the laws of this State, *but not including abortions, or induced miscarriages or premature births, unless, in the opinion of a physician, such procedures are necessary for the preservation of the life of the woman seeking such treatment, or except an induced premature birth intended to produce a live viable child and such procedure is necessary for the health of the mother or her unborn child.* The preceding terms include nursing care and nursing home service for persons who rely on treatment by spiritual means alone through prayer for healing.

[The Illinois Department, by rule, may distinguish and classify the medical services to be provided in accordance with the classes of persons designated in Section 5-2.]

The Illinois Department shall establish such regulations governing the dispensing of health services under this Article as it shall deem appropriate. In formulating these regulations the Illinois Department shall consult with and give substantial weight to the recommendations of-



fered by the Legislative Advisory Committee. The Department should seek the advice of formal professional advisory committees appointed by the Director of the Illinois Department for the purpose of providing regular advice on policy and administrative matters to the Illinois Department.

All dispensers of medical services shall be required to maintain and retain business and professional records sufficient to fully and accurately document the nature, scope, details and receipt of the health care provided to persons eligible for medical assistance under this Code, in accordance with regulations promulgated by the Illinois Department. The rules and regulations shall require that proof of the receipt of prescription drugs, dentures, prosthetic devices and eyeglasses by eligible persons under this Section accompany each claim for reimbursement submitted by the dispenser of such medical services. No such claims for reimbursement shall be approved for payment by the Illinois Department without such proof of receipt.

*The rules and regulations of the Illinois Department shall require that a written statement including the required opinion of a physician shall accompany any claim for reimbursement for abortions, or induced miscarriages or premature births. This statement shall indicate what procedures were used in providing such medical services.*

The Illinois Department shall require that all dispensers of medical services desiring to participate in the Medical Assistance program established under this Article to disclose all financial, beneficial, ownership, equity, surety or other interests in any and all firms, corporations, partnerships, associations, business enterprises, joint ventures, agencies, institutions or other legal entities providing any form of health care services in this State under this article.

The Illinois Department shall develop and operate, in cooperation with other State Departments and agencies and in compliance with applicable federal laws and regu-

lations, appropriate and effective systems of health care evaluation and programs for monitoring of utilization of health care services and facilities, as it affects persons eligible for medical assistance under this Code. The Illinois Department shall report regularly the results of the operation of such systems and programs to the Legislative Advisory Committee on Public Aid to enable the Committee to ensure, from time to time, that these programs are effective and meaningful.

(Ch. 23, par. 6-1).

Sec. 6-1. Eligibility requirements.) Financial aid in meeting basic maintenance requirements for a livelihood compatible with health and well-being, plus any necessary treatment, care and supplies required because of illness or disability, shall be given under this Article to or in behalf of persons who meet the eligibility conditions of Sections 6-1.1 through 6-1.6. *Nothing in this Article shall be construed to permit the granting of financial aid where the purpose of such aid is to obtain an abortion, induced miscarriage or induced premature birth unless, in the opinion of a physician, such procedures are necessary for the preservation of the life of the woman seeking such treatment, or except an induced premature birth intended to produce a live viable child and such procedure is necessary for the health of the mother or her unborn child.*

Until August 1, 1969, children who require care outside their own homes, where no other sources of funds or insufficient funds are available to provide the necessary care, are included among persons eligible for aid under this Article. After July 31, 1969, the Department of Children and Family Services shall have the responsibility of providing child welfare services to such children, as provided in Section 5 of "An Act creating the Department of Children and Family Services, codifying its powers and duties, and repealing certain Acts and Sections herein "named", approved June 4, 1963, as amended.



(Ch. 23, par. 7-1).

Sec. 7-1. (Eligibility requirements.) Aid in meeting the costs of necessary medical, dental, hospital, boarding or nursing care, or burial shall be given under this Article to or in behalf of any person who meets the eligibility conditions of Sections 7-1.1 through 7-1.3, *except where such aid is for the purpose of obtaining an abortion, induced miscarriage or induced premature birth unless, in the opinion of a physician, such procedures are necessary for the preservation of the life of the woman seeking such treatment, or except an induced premature birth intended to produce a live viable child and such procedure is necessary for the health of the mother or her unborn child.*

STATE OF ILLINOIS
COUNTY OF COOK } ss.:

## VERIFICATION

DAVID ZBARAZ, M.D., being first duly sworn upon his oath, states that he is a plaintiff in this cause and has thoroughly and carefully read the above and foregoing "Complaint" and that the statements contained therein are true to the best of his information, knowledge, and belief, and that he has executed the same as his free act and deed.

/s/ DAVID ZBARAZ, M.D.
DAVID ZBARAZ

SUBSCRIBED AND SWORN TO
before me this 5th day of December, 1977.

/s/ LOIS BINKLEY



STATE OF ILLINOIS
COUNTY OF COOK } ss.:

## VERIFICATION

MARTIN MOTEW, M.D., being first duly sworn upon his oath, states that he is a plaintiff in this cause and has thoroughly and carefully read the above and foregoing "Complaint" and that the statements contained therein are true to the best of his information, knowledge, and belief, and that he has executed the same as his free act and deed.

/s/ MARTIN MOTEW
MARTIN MOTEW

SUBSCRIBED AND SWORN TO
before me this 5th day of December, 1977.

/s/ LOIS BINKLEY

**UNITED STATES DISTRICT COURT**
**IN THE NORTHERN DISTRICT OF ILLINOIS**
**EASTERN DIVISION**

| | |
|---|---|
| **DAVID ZBARAZ, M.D., et al.,** ***Plaintiffs,*** **vs.** **ARTHUR F. QUERN, etc.,** ***Defendant.*** | No. 77 C 4452 |

## AFFIDAVIT

OREN RICHARD DEPP, III, M.D., being duly sworn, states as follows:

1. I am a resident of Chicago, Illinois. If called as a witness, I would testify to the facts stated herein based on my personal knowledge and on the medical literature and statistical data which are cited herein and which are recognized in the medical profession as reliable.

2. I am Director of the Division of Obstetrics and Chairman of the Perinatal (High-risk Pregnancy) Center at Prentice Women's Hospital and Maternity Center of Northwestern Memorial Hospital in Chicago, Illinois. I am also Associate Professor in the Department of Obstetrics and Gynecology ("ob/gyn") and Head of the Section of Maternal-Fetal Medicine at Northwestern University Medical School in Chicago. I am licensed to practice medicine in the states of Illinois, Pennsylvania, Washington and Louisiana. I am board certified in the specialty of ob/gyn, which is the area of medicine concerned with the reproductive care of women. In addition, I am board certified in maternal-fetal medicine, which is a sub-specialty of ob/gyn concerned with the care of high-risk pregnancies. In order to be board certified, a physician must pass oral and written examinations after practicing a specified number of years in the specialty (4 years of post-graduate study plus two years of specialized practice for ob/gyn; 5 years of specialized practice for maternal-fetal medicine). There are approximately 90 board certified physicians in the sub-specialty of maternal-fetal medicine in the United States. A complete description of my medical qualifications and publications is attached hereto (Appendix 1).



3. I have practiced medicine in my specialty and sub-specialty since 1963. During the time I was Director of the Fetal-Maternal Intensive Care Unit at Magee Womens Hospital in Pittsburgh, Pennsylvania, I was primary consultant for some 30,000 patients; since I have been at Prentice Women's Hospital and Maternity Center, I have supervised the perinatal health care for some 6,000 patients. I have personally examined several thousand women patients, including women who have desired to terminate their pregnancies. Many of my patients are poor, and many receive medical assistance from the State of Illinois. I have evaluated women for "life-saving" abortions prior to the legalization of abortion in 1973. I have also examined, and presently examine, pregnant women to evaluate health risks of their pregnancies. As Chairman of the High Risk Pregnancy Center at Prentice, I direct the delivery of special, intensive health care services for women with high-risk pregnancies, in order to minimize the risks to them of childbirth and to enable them to carry their pregnancies safely to term.

4. In preparing this statement, I have, in addition to my own experience in and knowledge of the matters stated, read the following articles, which I find to be accurate and reliable and which are considered to be authoritative and reliable in my profession:

Pettiti and Cates, "Restricting Medicaid Funds for Abortions: Projections of Excess Mortality for Women of Childbearing Age," 67 *Am. J. Public Health,* No. 9 (September, 1977), pp. 860-62 (particularly for ¶ 5 of my statement). Appendix 2.

Weaver and Inui, "Information about Health Care Providers Among Urban Low Income Minorities," XII *Inquiry* (December, 1975), pp. 330-343 (particularly for ¶17 of my statement. Appendix 3.)

Osofsky, Rizk, Fox and Mondanaro, "Nutritional Status of Low Income Pregnant Teenagers," 6 *Journal of Reproductive Medicine,* No. 1 (January, 1971), pp. 52-56 (editorial pages 29-33) (particularly for ¶ s 16 and 17 of my statement). Appendix 4.

Department of Health Education, and Welfare, Office of the Secretary, *Memorandum: Adolescent Pregnancy and Related Issues* (August 4, 1977), selected portions (particularly for ¶16 of my statement). Appendix 5.

Battaglia, Frazier, and Hellegers, "Obstetric and Pediatric Complications of Juvenile Pregnancy," *Pediatrics* (November, 1963) pp. 902-10 (particularly for ¶16 of my statement.) Appendix 6.

National Academy of Sciences, Institute of Medicine, *Legalized Abortion and the Public Health: Summary and Conclusions* (May, 1975) (particularly for ¶ s 5 and 6 of my statement) Appendix 7.

5. Abortions performed under appropriate medical conditions during the first trimester of pregnancy are far safer—in terms of maternal morbidity and mortality—than childbirth. Approximately 18 in 100,000 women die as the result of childbirth, while fewer than 2 in 100,000 women die as the result of first trimester abortions. Second trimester medical abortions are not as safe as abortions performed during the first trimester, but are about as safe as childbirth. As the term of pregnancy lengthens, abortions become less safe. The decreased safety (or increased danger) is measurable from each week to the next. After the 12th week of pregnancy, the risk increases linearly.



6. For pregnant women with medical conditions or diseases which pose a risk to their health, the danger of childbirth is significantly greater than indicated by the figures in the previous paragraph. However, a medical abortion remains about as safe for such women as it is for women generally.

7. I have been informed that the State of Illinois will reimburse providers under its medical assistance programs for abortions only where such abortions "are necessary to preserve the life" of the pregnant woman. I could not be certain how to evaluate a patient for an abortion under this standard. Medical decisions cannot be approached in terms of certainties. A patient must be evaluated in terms of probabilities and risks (which the State of Illinois' standard does not set forth). Rarely can a physician determine that an abortion is clearly necessary to preserve the life of a pregnant woman. The standard, moreover, is vague as to whether childbirth must result in immediate death to the woman or just shorten her life to some degree.

8. To the extent that the standard enunciated in the previous paragraph means that it is more probable than not that pregnancy and childbirth would result in the woman's immediate death, a very small number of pregnant women—less than 10 in 10,000—would meet this standard.

9. In this statement, I attempt to give only exemplary rather than exhaustive descriptions of medical conditions or diseases which pose a risk to the health of the pregnant woman. An exhaustive list would require volumes of description. These types of conditions, existing alone or in combination, must be evaluated on a case-by-case basis by the examining physician. Where they exist together with a firm wish by the patient to terminate the pregnancy, such termination, in my opinion, would be medically-indicated (or "medically necessary" or "therapeutic").

10. A pregnant woman with such a medical condition or disease who is not motivated to carry her pregnancy to term will fare far worse, in terms of her physical health, if she is required to carry her pregnancy to term, than a woman with the same condition or disease who desires to continue her pregnancy. It has been my experience that these women will not obtain necessary health care during their pregnancies or will delay obtaining such care beyond a critical time. This is true whether the health risk involves a serious condition, such as diabetes, or a less serious condition, such as protein—or iron-deficiency. These women thereby often increase the risk to their health posed by pregnancy. Diabetic patients are notorious examples of such increased risk to health, because diabetes control is related to patient motivation. Pregnant diabetics who are not motivated to carry their pregnancy to term frequently refuse to control their diet appropriately and often refuse necessary hospital stays during their pregnancies or sign out of hospitals prematurely against the advice of their physicians.

11. Some of the same medical conditions or diseases which would pose a threat to a woman's life, if her pregnancy were carried to term, could, in milder form, be characterized as posing a threat to her health (if her pregnancy were carried to term). The characterization of health-threatening or life-threatening depends on the severity of the condition or disease and on the gestational age during which a physician observes the patient. Where such a condition poses a risk to health rather than life in the short term, the effect of pregnancy and childbirth is to accelerate the condition and, in many cases, to shorten the woman's life expectancy. A few examples of such conditions are: chronic lung disease (childbirth accelerates the deterioration of the lung function), essential hypertension (pregnancy may increase the likelihood of pre-eclampsia, a medical complication of pregnancy characterized by significant elevation of the blood pressure in the presence of significant protein loss in the urine and edema, which in turn accelerates



the likelihood of vascular disease and the risk of a cerebral-vascular accident, of brain, vessel and kidney damage, and increased incidence of diabetes), diabetes (pregnancy has an adverse affect on eye changes in a diabetic and on kidney function), heart disease (particularly mitral stenosis—the most common cardiac complication associated with pregnancy), sickle-cell disease (SS hemoglobin and SC hemoglobin—pregnancy can accelerate the frequency and severity of sickle-cell crises), and renal (kidney) disease.

12. Furthermore, not all medical conditions or diseases which would become life-threatening if the pregnancy were carried to term are predictable to any degree of certainty during the first trimester of a woman's pregnancy. Some such conditions appear at first as health-threatening rather than life-threatening, and there is no way to predict in any individual case whether the condition will become life-threatening until well after the first trimester of pregnancy, and often not until after the 28th week, when it is too late to perform an abortion safely. Examples of such conditions include cardiac problems, essential hypertension and diabetes. Both essential hypertension and protein deficiency are statistically associated with pre-eclampasia (see ¶11) which is one of the leading causes of maternal mortality (in childbirth), but there is no way to predict, in any individual case, that pre-eclampsia might occur. Diabetics are particularly prone to infection (one of the other leading causes of maternal mortality), and, therefore, childbirth poses a serious risk to the diabetic patient, but there is no way to predict the likelihood that any individual diabetic patient will develop infection during childbirth.

13. I have been informed that federal law will fund abortions under the Medicaid program where a pregnancy, if not terminated, would result in *severe* and *long-lasting* physical health damage to the pregnant woman. But neither severity nor duration of physical health damage is predictable in many particular circumstances. Even where a physician can, during

the first trimester of pregnancy, predict that a medical condition or disease would result in physical health damage to a woman (if the pregnancy were carried to term), the severity of such physical health damage cannot be predicted. For example, as previously stated, pregnancy poses a risk of physical health damage to a patient suffering from essential hypertension or malnutrition. But whether these conditions are likely to result in pre-eclampsia and, thus, *severe* physical health damage in *a particular patient* is impossible to predict. Nor can a physician predict whether a particular patient likely to suffer physical health damage (if the pregnancy were carried to term) will suffer *long-lasting* physical health damage. In fact, no adequate follow-up (post-childbirth) studies have been conducted or morbidity statistics developed, and physicians, thus, probably underestimate the duration or permanent character of some physical health damage resulting from pregnancy and childbirth.

14. Not all medical conditions or diseases which create a risk to a pregnant woman's health are pre-existing conditions. They may, rather, arise for the first time during pregnancy, or, if they pre-date the pregnancy, are often undetected until pregnancy. For example, trophroblastic disease ("mole pregnancy"), a degenerative disease of the placenta with a high malignant potential, which affects one in 800 pregnancies, arises for the first time during pregnancy. Heart disease (particularly mitral stenosis) is often detected for the first time during pregnancy—when added stress is placed on the pregnant woman's heart.

15. Even when no medical conditions or diseases are present or develop during the initial period of pregnancy, a woman's age, economic status and ethnicity all affect the probabilities and risks posed by pregnancy. Here, too, however, a physician is often unable to predict with reasonable certainty the danger to a particular patient but must evaluate the statistical probabilities. For example, a woman who is over



35 years old and/or has had five or more children is considered a very high pregnancy risk—even if she has no pre-existing or developing medical conditions or diseases. Statistics show a significant increase in the likelihood of such a woman's developing hemorrhage, heart disease, and hypertension, to name a few, as the result of pregnancy and childbirth. This is because the stress on the cardiovascular and metabolic systems and the endocrine changes brought on by pregnancy tend to unmask or accelerate conditions brought on by the aging process. If, in addition, this woman wanted to terminate her pregnancy, I would—absent medical indications to the contrary—consider such termination to be medically indicated—even though I could not predict the likelihood of danger to this particular woman—because of the statistical probabilities of health or life compromise.

16. Adolescent females under the age of 16 and older adolescents who are not fully developed comprise another age group for whom pregnancy poses a statistically higher health risk than it poses for women in general. Complications of pregnancy and childbirth are from 9 to 25% higher for this group than for women aged 20-24. For this category it is also often impossible to predict with reasonable certainty the danger to a particular patient. Adolescents suffer a high rate of pre-eclampsia (see ¶ 11, one of the leading causes of maternal mortality), as the result of pregnancy and childbirth. Adolescents are also more prone to develop anemia and malnutrition because their own developing systems are competing with the fetus for the same food supply. These conditions can create serious health risks in childbirth. For example, they can cause fetal malnutrition which would then require that childbirth be accomplished by caesarian section because the malnourished baby cannot withstand labor. Caesarian delivery is also advisable where the woman has a contracted (or underdeveloped) pelvis—a condition common to adolescents as well as to women under five feet tall. Caesarian section creates a greater risk to maternal life and health than does normal

childbirth (there is a risk of wound infection, pulmonary embolism, thrombophlebitis, as well as risks associated with anesthesia—aspiration, pneumonitis and seizures). Moreover, when a young woman has had one caesarian delivery, all of her future childbirths must be accomplished by caesarian because the process of labor creates a risk of tearing the scar tissue of the previous caesarian. Thus the health and life risk is compounded by the number of future childbirths.

17. Poor women—and especially poor, black women —comprise another high pregnancy risk group. Statistically they have or develop certain conditions during pregnancy which pose unique or more severe health problems as compared to the female population in general. And the maternal mortality rate is much higher for these women than for the female population generally. Some of the pregnancy risks resulting from these conditions are individually predictable; some are only statistically predictable. The conditions include, for example, anemia, malnutrition (especially protein-depletion), rheumatic heart disease, essential hypertension, which is more prevalent among the poor, black population, and sickle-cell disease, which is almost unique to the black population. A few effects of pregnancy and childbirth on some of these conditions have been previously described (pre-eclampsia is associated with essential hypertension as well as malnutrition; malnutrition may also result in caesarian delivery; sickle-cell disease can result in more severe and frequent sickle-cell crises). In addition, anemia can result in a decreased ability of the blood to carry oxygen to vital tissues. Another important factor in evaluating pregnancy health risks to poor women is the crucial importance of bed-rest during pregnancy to minimize risks posed by various conditions or diseases. Pregnancy and childbirth create a far greater health risk for a poor woman with a relatively mild condition of any sort who is unable to get extra bed-rest due to familial or job demands (or because she is unable to obtain outside help with chores or children) than for a woman with the identical condition who is able to obtain



extra bed-rest. The stress to the system caused by pregnancy will accelerate the condition where simple bed-rest is unavailable to compensate for the stress. Another problem more prevalent among the poor population is lack of access to, and utilization of, adequate health care facilities. Chicago has adequate facilities to accommodate approximately 6,000 high risk pregnancies annually; yet there are well over 10,000 such pregnancies in the city each year. (Chicago also has the highest prenatal and maternal mortality rate of any city in the United States.) The poor population of course bears the brunt of this inadequacy. Moreover, poor women, as a group, have a far lower rate of utilization of health care facilities—even where such facilities are available—than the female population generally.

/s/ OREN RICHARD DEPP, III
Oren Richard Depp, III

SUBSCRIBED AND SWORN TO before me this 12th day of December, 1977.

/s/ KATHLEEN M. EVANS
Notary Public

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE NORTHERN DISTRICT OF ILLINOIS**
**EASTERN DIVISION**

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| **DAVID ZBARAZ, et al.,** ***Plaintiffs,*** **v.** **ARTHUR F. QUERN,** ***Defendant.*** | Civil Action No. 77 C 4522 |

## AFFIDAVIT OF DAVID ZBARAZ, M.D.

DAVID ZBARAZ, being duly sworn, states as follows:

1. I am 39 years old and a plaintiff in the above case.

2. I am an obstetrician and gynecologist, practicing at Michael Reese Hospital in Chicago, Illinois.

3. Michael Reese Hospital maintains a pregnancy termination unit ("PTU"), which is staffed on a rotating basis by members of the Department of Obstetrics and Gynecology.

4. I have been a member of the PTU since its inception in 1973. During 1977, I performed pregnancy terminations (abortions) in the PTU one or two days per month.

5. In 1977 I performed an average of about six abortions for my patients in the PTU during each day that I was on call there.

6. Approximately 40% of the patients for whom I performed abortions in the PTU during 1977 were public aid recipients receiving assistance under the Illinois Medical Assistance Programs ("public aid recipients"), and approximately 35% of those abortions were ones I deemed medically necessary to preserve the health of the women.



7. Prior to the effective date of the cutoff of Illinois Medical Assistance Program funds for abortions, Michael Reese Hospital was reimbursed by the Illinois Department of Public Aid for abortions performed for public aid recipients.

8. For each abortion I performed for a public aid recipient, Michael Reese Hospital paid me $60.00 from the funds it received from IDPA.

9. I desire to continue performing medically necessary abortions for patients receiving assistance under the Illinois Medical Assistance Program, but Michael Reese Hospital cannot and will not provide facilities for abortions for indigent patients without reimbursement from public funds.

/s/ DAVID ZBARAZ, M.D.
DAVID ZBARAZ, M.D.

SUBSCRIBED AND SWORN TO before me this 13th day of December, 1977.

/s/ LOIS BINKLEY
(Notary Public)

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE NORTHERN DISTRICT OF ILLINOIS**
**EASTERN DIVISION**

| | |
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| **DAVID ZBARAZ, et al.,** *Plaintiffs,* **v. ARTHUR F. QUERN,** *Defendant.* | Civil Action No. 77 C 4522 |

## AFFIDAVIT OF MARTIN MOTEW, M.D.

MARTIN MOTEW, M.D., being duly sworn, states as follows:

1. I am 35 years old and a plaintiff in the above case.

2. I am an obstetrician and gynecologist, practicing at Michael Reese Hospital, Chicago, Illinois.

3. Michael Reese Hospital maintains a pregnancy termination unit ("PTU"), which is staffed on a rotating basis by members of the Department of Obstetrics and Gynecology.

4. I am a member of the PTU at Michael Reese Hospital. During 1977 I performed pregnancy terminations (abortions) in the PTU one or two days per month for patients on an outpatient basis.

5. In 1977 I performed an average of about six abortions for my patients in the PTU during each day that I was on call there.

6. Approximately 40% of the patients for whom I performed abortions in the PTU during 1977 were public aid recipients receiving assistance under the Illinois Medical Assistance Programs ("public aid recipients"), and approximately 35% of those abortions were ones I deemed medically necessary to preserve the health of the women.



7. Prior to the effective date of the cutoff of Illinois Medical Assistance Program funds for abortions, Michael Reese Hospital was reimbursed by the Illinois Department of Public Aid ("IDPA") for abortions performed for public aid recipients.

8. For each abortion I performed for a public aid recipient, in 1977, Michael Reese Hospital paid me $60.00 from the funds it received from IDPA.

9. I desire to continue performing medically necessary abortions for patients receiving assistance under the Illinois Medical Assistance Programs, but Michael Reese Hospital cannot and will not provide facilities for abortions for indigent patients without reimbursement from public funds.

/s/ MARTIN MOTEW, M.D.
MARTIN MOTEW, M.D.

SUBSCRIBED AND SWORN TO before me this 13th day of December, 1977.

/s/ LOIS BINKLEY
(Notary Public)

**Illinois House of Representatives, Transcript of Debate on House Bill 333 (May 4, 1977)**

SPEAKER REDMOND: "Three three three. Representative Leinenweber. Would you read the Bill, Mr. Clerk?"

CLERK HALL: "House Bill 333, a Bill for an Act to amend Sections of the Illinois Public Aid Code, Third Reading of the Bill."

SPEAKER REDMOND: "Leinenweber."

LEINENWEBER: "Thank you, Mr. Speaker. House Bill 333 is a relatively simple Bill. It eliminates . . . briefly, it eliminates state payment for abortions under the Medical Assistance Program of the Department of Public Aid unless the physician certifies that the abortion is necessary to protect the life of the mother. House Bill 333 does not raise the question of whether a woman has a right to have an abortion. The issue is, 'as a matter of public policy of the State of Illinois . . . to pay for abortions that are not medically necessary'. Conceding that at the moment there are at least five Supreme Court Justices who have stated that the woman's right to privacy is broad enough to include the decision whether to abort. It does not follow that the taxpayers must pay to enable her to fulfill this right. We have many rights guaranteed under the Constitution, including the Fourth Amendment . . . Many of these rights are not funded. For example, we have a right to interstate travel but we don't get free bus tickets. We have a right to a free press, but we don't have free printing payments. We have a right to assemble but no one pays for the right to rent a hall. We have a right to read what we want in the privacy of our homes but the state does not pay for pornography. We have a right to cosmetic surgery but the state does not pay for hair transplants. The state, through its exercise of public policy, decides what right it should fund. For example, we have a right to elementary and secondary education and the State of Illinois fulfills that right by funding, one hundred percent through state and local government, our right to elementary and secondary



education. House Bill 333 seeks to set public policy by drawing a line on payments for nonmedically necessary surgery. To my knowledge the only nonmedically necessary surgery now paid by the state is abortions. They do not pay for hair transplants, they do not pay for facial uplifts. It is urged by some that denial of state public aid for nonmedically necessary abortions is a denial of the Constitutional rights of a poor woman. First, her Constitutional right is not to an abortion but to the right of privacy. It is none of the state's business whether she and her doctor decide to have an abortion. It does not follow that the state must pay for what is none of its business. It is urged by others that it is a denial of due process to pay for some medical costs but not others. The state currently makes no pretense of paying for any and all medical procedures. The question is, if there is one at all, is there rational distinction between . . . medically necessary and medically unnecessary surgery? To state the question is to answer it. In conclusion, House Bill 333 seeks to set public policy that the state ought not to pay for nontherapeutic medically unnecessary abortions. There are millions of Illinois taxpayers who believe deeply that nontherapeutic abortions are morally objectionable. These feelings are to be recognized in the public policy of this state. I urge your support for House Bill 333."

SPEAKER REDMOND: "Representative Bradley."

BRADLEY: "Thank you, Mr. Speaker. Mr. Speaker and Ladies and Gentlemen of the House, I rise to support this piece of legislation and make a few comments in support of my Cosponsor's remarks, Mr. Leinenweber. Mr. Speaker and Ladies and Gentlemen of the House, nowhere . . . nowhere in the Supreme Court's 1973 abortion decision did that majority report assert that the right to be free from legal restraints in deciding on . . . and obtaining an abortion, carried with it a duty on the part of the state to pay for the abortion when a pregnant woman could not afford one. The expressed will of Congress, Ladies and Gentlemen, contained . . . in the so-called

Hyde Amendment, to the HEW Labor Appropriations Act of October 1976, is that the Federal Government is not . . . is not to pay for abortions . . . with tax moneys. Their will has been disregarded by Federal Judge John Duley's decision to stay enforcement of the ban which decision was allowed to stand at least temporarily by the U.S. Supreme Court. The Federal Constitution gives to Congress alone the power to appropriate money from the U.S. Treasury. It seems clear that the Supreme Court must ultimately bow to the will of Congress on this matter and I hope that they do that very shortly. If the state and or . . . the Federal Governments pay for the exercise of . . . Constitutional Rights, as Representative Leinenweber indicated, all the other rights that we have, are we expected to fund those rights also? It is worth . . . adding note . . . that the right to abortion was only recently discovered by the Supreme Court. It is certainly not one of the framers of our Constitution. They certainly did not see fit to include it. Also, Ladies and Gentlement of the House, pregnancy is not an illness. An abortion is not just another medical procedure. It is an elective surgery undertaken to relieve stresses which are nearly always social, economic or psychological. Seldom physical to the point of threatening a pregnant woman's life. We have heard that it has been charged with House Bill 333 and its Federal counterpart are discriminatory towards the poor. If the state is required to make accessible to the poor all those commodities that the wealthy can afford on their own then the Treasurer had better girt up for the onslaught. In 1973, pardon me, in 1975 . . . HEW paid something like fifty million dollars for welfare abortions. We tried to get the figures on what it was costing the State of Illinois and we could not come up with an accurate figure but we know it runs into millions of dollars. This kind of money, Ladies and Gentlemen, could go a long way toward alleviating the conditions that sometimes make abortions seem like the only way out of a difficult situation. In particular the difficulty that a pregnant unmarried woman has in obtaining relief until she has delivered her baby is not only deplorable but it is often the deciding factor for a woman who



is on the fence between abortion and carrying a baby to full term. The question Ladies and Gentlemen, is not on the abortion issue, but the question on House Bill 333 is whether the state was going to pay for those abortions and I urge the support of House Bill 333."

SPEAKER REDMOND: "Representative Hudson."

HUDSON: "Thank you . . . thank you, Mr. Chairman and Ladies and Gentlemen of the House. This particular kind of Bill and the subject is of course inclined to be or apt to be, an emotional one and it would therefore seem to me to be in the interest of all to address myself to the rational and reasonable basis behind House Bill 333, which I strongly support. The Bill seeks to cover the cost of only medically necessary procedures and not elective procedures. And . . . it would seem to me that to deny that the state may make distinctions between medically indicated abortions and non-medically indicated abortions in its social and economic programs, would be to deny to the legislative authorities and to all of us as Representatives, the right to make rational classification based on valid public interest. The issue seems to be also, whether the equal protection clause of the Federal Constitution has thrust upon Illinois an affirmative burden to pay for elective non-medically indicated abortions . . . if the state pays for any other cost arising from medical necessities and pregnancy. It would be foolish, I believe, to apply this strict scrutiny test of equal protection to the abortion funding question, and thus declare that because one has a fundamental right to abortion, which the courts have said women do, that the state must perforce and therefore finance it. This is so because there is no constitutional mandate that the state must finance the exercise of fundamental rights. Representative Leinenweber has already called your attention to other rights that are recognized as fundamental, but which at the same time the state is under no obligation to finance or to pay for it. I think this is essential to our understanding of this issue. I would conclude by simply

suggesting to you, my colleagues, that this is an entirely rational, constitutional, legal approach to a very difficult question and that the enactment of House Bill 333 seems to fall within the discretion granted the State of Illinois under Title IX, and in no way conflicts with a woman's abortion right under the United States Constitution. I commend Representative Leinenweber for the Bill, and other Sponsors, and recommend strongly that you think about it and you cast a green vote for this essential protective Bill. It's in the best interest of all of our taxpayers and all of our citizens. I urge you to vote 'yes' on 333."

SPEAKER REDMOND: "Representative Chapman."

CHAPMAN: "Mr. Speaker, I wonder if the Sponsor would yield to a question?"

SPEAKER REDMOND: "He will."

CHAPMAN: "Mr. Leinenweber, could you tell me . . . under your Bill, if it became law, what would happen if someone on public aid were raped or if there was incest occurring? Would your Bill provide for abortion under those circumstances?"

LEINENWEBER: "No."

CHAPMAN: "I think you said 'no' . . . Mr. Leinenweber?"

LEINENWEBER: "Correct. I said 'no'."

CHAPMAN: "Okay. Thank you. I have a further question. Has Bills such as yours, when they have been approved by other states, been upheld to your knowledge . . . by any of the courts?"

LEINENWEBER: "To my knowledge, there is only one . . . there is no definitive decision on this particular question. The . . . there is currently a district court injunction restraining the Department of Health, Education and Welfare from operating under the Hyde Amendment. That is the closest thing to a court decision. The district court decision of course only applies in that particular district."



CHAPMAN: "Mr. Leinenweber, my understanding was that there were three different instances where suits were brought and all three of these federal district courts issued restraining orders in regard to the so-called Hyde Amendment. Is that true to your knowledge?"

LEINENWEBER: "To my knowledge, the district court of New York has issued a restraining order, which means that in the opinion of a particular district court judge who was appointed . . . appointed judge . . . that in his opinion there was a question as to the constitutionality of the Hyde Amendment. . . . As far short of a definitive . . . point which you are leading up to is whether or not the Bill is Constitutional."

CHAPMAN: "May I speak to the Bill now, Mr. Speaker?"

SPEAKER REDMOND: "You may."

CHAPMAN: "Denial of funding for abortions under the Medical Assistance Program clearly discriminates against public aid recipients. Equal protection arguments have thus far been upheld in states that have attempted restrictions similar to those embodied in this Bill. Rape is a very real concern. It not only is a problem as far as information that we have but it is an under-reported crime. To deny to public aid recipients help under the law in these circumstances to me is absolutely unacceptable. Clearly, when this matter is before the courts now, it makes sense to defer any decision until the court has spoken and I do ask the Members of this House to vote 'no' on House Bill 333."

SPEAKER REDMOND: "Representative Peters."

PETERS: "Mr. Speaker, I move the previous question."

SPEAKER REDMOND: "The Gentleman has moved the previous question. The question is, shall the main question be put? Those in favor indicate by saying 'aye'; 'aye'; opposed 'no'; the 'ayes' have it. Representative Leinenweber to close . . . you all . . . to explain your vote."

LEINENWEBER: "Well, Mr. Speaker, in response to the last speaker's point about whether we should defer until there is a definitive court ruling. There's absolutely no reason in the world, when there is not a definitive court that we should not do something that is just and right. Since the state medical programs are presumably instituted to protect the lives and health of the poor, how does payment for elective medically unnecessary surgery serve the state's interest? Even setting aside the central moral question of feticide in every abortion, should the state be forced to pay for operations simply because some patients happen to want them? Millions of taxpayers happen to believe that there are better uses for our tax dollars than killing unborn children. I urge your support of House Bill 333."

SPEAKER REDMOND: "The question is, shall this Bill pass? Those in favor vote 'aye', opposed vote 'no'. Representative Barnes to explain his vote."

BARNES: "Mr. Speaker and Members of the House, in explanation of my vote, and I will try to be brief because my light was on from the very beginning of the debate and I wasn't allowed a chance to speak to the Bill. . . . It seems to me that there are some contradictions here. On the one hand . . . one of the proponents of this Bill . . . and I see it is going to pass . . . On the one hand he says that there was fifty million dollars spent for this purpose in the last fiscal year. But on the other hand . . . and I underline this . . . on the other hand, in this state, the only area in public aid that had a reduction in it, in this fiscal year, was Aid to Dependent Children. That was the only area that went down. One of the causes of that reduction is before us today, the prohibition that you are putting on medical service for poor. It seems to me that on the one hand if you say that the poor cannot receive medical services in this area, then on the other hand not appropriate sufficient amount of money for those families to live on, it seems to me that you are doing only one thing here, you're saying to them that they cannot receive services . . . medical services . . . that are provided for the population as a whole, but yet and still you will not provide for



them . . . the necessary funds for them to survive. It seems to me that if we're going to do something in that fashion, that there is only one alternative . . . is to fund these programs. To insure that the programs are sufficient for the people to survive on them or either allows them . . . allows them, in concert with all laws, with all federal courts, to be able to receive the same medical services that are available for all citizens in all walks of life . . . in our state and in our country. This state and this legislation has not been upheld by any court . . . by any court . . . in this state or by the Federal Government and I'm more than sure that it will not be upheld even though it will sell out of here with those 111 votes. When the public aid supplemental and the public aid appropriation come over, I'm going to remind each and every one of those 111 votes to insure that there are sufficient money to fund those public aid programs. I vote 'no'."

SPEAKER REDMOND: "Representative Gaines to explain his vote."

GAINES: "Mr. Speaker, Ladies and Gentlemen of the House, I wish to join my able colleague on the other side of the aisle who admonished these so-called frugal, thrifty minded Legislators . . . that when you get down to the whole bottom of the deal you are talking about spending three hundred dollars to our mother who says that I can't handle this child, an opportunity not to have a child that you'll have to support for twenty years on public aid, another twenty years in prison, and then the rest of its life on old age. The one thing that most cripples have in common be they millionaires or paupers, is that they feel that they are not wanted. I was a public aid worker for nine years and if a mother came and said, 'I can't handle this child.' She really means it. Do you, on one hand, force her to have the child and on the other, ask her to take care of it which she is not going to do? Then you are not going to appropriate sufficient funds to take care of that child in a foster home. You're not going to appropriate sufficient funds to take

care of that child in a mental institution. You're not going to appropriate sufficient funds to take care of that mother in a penal institution. You're not going to appropriate enough funds to do anything to support that child after it gets here. Yet you say you want to economize. I know you want to use the least of these as a whipping boys and girls. As the Good Lord says, 'As you do the least of these you do unto Me.' So I'm saying that all of you righteous folks when the time comes to pay the piper, remember you called the tune. So I'm voting 'no'."

SPEAKER REDMOND: "Representative Johnson."

JOHNSON: "Yes, Mr. Speaker and Ladies and Gentlemen of the House, in explaining my vote, there have been a variety of reasons given here for supporting or opposing this particular Bill. But I think when you strip away all of the reasons, in my opinion and in my mind in voting it, this is absolutely a right to life vote. I believe so strongly in the right of every person, including the unborn, to be free from the unnatural termination of its life that, notwithstanding the fact that the Supreme Court, in my opinion wrongfully and morally has taken away the right of the unborn to continue to live. This is an important step and at least one step that we can take and Constitutionally take to try to restore the right to life of every person. I think that for this Legislature to continue to appropriate money or allow money to the Department of Public Aid or elsewhere, to be used for abortions, is the same, in my opinion and I emphasize absolutely the same, as if we had a line item appropriation this year for a professional killer or a hit man to go out and eliminate people who are undesirable. I think it's that clear an issue and I think is a right to life issue and in that framework every Member of this General Assembly ought to rise in strong support of House Bill 333."

SPEAKER REDMOND: "Representative Willer."



WILLER: "Yes, Mr. Speaker and Ladies and Gentlemen of the House, I am voting 'present' today on this Bill. Two years ago in Committee, I voted against it because I was convinced it was discriminatory and therefore unconstitutional. I am voting 'present' today. I'll explain this to my constituents because this now is before the Federal Court and the Hyde Amendment will be decided by the Federal Court. If the Court upholds it and finds it constitutional so be it, we can then pass the Bill. I don't know how the court is going to rule. I suspect it will find it unconstitutional. I hope they don't. I'm against abortion, but I see no point in what I call a 'knee-jerk' reaction to the demands of our voters to be constantly throwing Bills in the courts. This is exactly what we're going to be doing with this one. It's very emotional, it so easy to vote 'yes' and please your constituents because I am a pro-life person. I think it is dishonest. I live under a constitution and I think we ought to wait for the Federal Courts to make the decision, which they will be doing shortly."

SPEAKER REDMOND: "Representative Corneal Davis."

DAVIS: "Mr. Speaker, Ladies and Gentlemen of the House, I'm happy to follow the distinguished Lady that . . . who spoke before me. I will not twist my logic to support my prejudice. Who interprets the law? We make the law but we do not interpret it. They might take into consideration the intent of the Legislature, but not the interpretation and you know that. You're simply whistling sand across the desert, and poking a finger of scorn at poor women who can't afford to pay for an abortion. Let the courts of this land continue to interpret the laws and let us continue to make laws. Always with a clear view in mind that this is one nation under God . . . with liberty and justice for all. This means poor, rich, white, black, blue or blind. That's why I'm voting 'no'. It's discriminatory and you know it."

SPEAKER REDMOND: "Representative Ryan."

RYAN: "Thank you, Mr. Speaker and Ladies and Gentlemen of the House. I'd like to interrupt here for a minute, if I may, to introduce the young man that's here to kickoff the Juvenile Diabetes Foundation drive for the Springfield region and he is with us here this afternoon. Mr. Jeff Vorderstrasse, from the Springfield area. Jeff is here with us today."

SPEAKER REDMOND: "Representative Kelly. Representative Kelly . . . Representative Pullen . . ."

PULLEN: "Mr. Speaker, Ladies and Gentlemen of the House, there is no doubt in my mind as to who is in charge of the spending of the State of Illinois and that is this Body and the Body across the hall. If we cannot control whether Medicaid funds shall be paid for abortions, who can? Certainly this is in our authority and we must act today to stop the use of public money for murder. I shudder to think about the public aid caseworkers whom we pressure all of the time to cut the caseload, counseling pregnant public aid mothers who are in an emotional moment and counseling them very possibly to have an abortion so that they don't increase the caseload. This is a horrible thought to my mind but I can see how it could very well happen. We must stop this murder. This genocide . . . if you will. I urge you to vote 'aye' on this very good Bill."

SPEAKER REDMOND: "Representative Neff."

NEFF: "Thank you, Mr. Speaker. I'd like to interupt to introduce a school we have from the 47th District. Represented by Representatives McGrew . . . McMaster and myself. This is the Roseville School, sitting over in the . . . east balcony . . . and they are with Paul Stephenson, the Principal of the School."

SPEAKER REDMOND: "Have all voted who wish? The Clerk will take the record. On this question there's 119 'aye' and 41 'no'. The Bill having received the Constitutional Majority is hereby declared passed. Representative Geocaris."



**Illinois Senate, Transcript of Debate on House Bill 333 (June 27, 1977)**

SECRETARY: House Bill 333.

(Secretary reads title of bill)

3rd reading of the bill.

PRESIDING OFFICER: (SENATOR DONNEWALD) Senator Lemke.

SENATOR LEMKE: This amends the Illinois Public Aid Code to eliminate abortions as medical assistance for which payments will be authorized unless in the opinion of a physician, such procedures are necessary for the preservation of the life of the woman. I ask for a favorable adoption.

PRESIDING OFFICER: (SENATOR DONNEWALD) Is there further discussion? Senator Carroll.

SENATOR CARROLL: Thank you, Mr. President, members of the Senate. I will keep it very brief. We discussed parts of this yesterday. I just want to again say that this action, in my opinion, is totally discriminatory for it does nothing to those who can afford to pay for this medical procedure and merely eliminates those who cannot afford to pay for it of their own funds and therefore, use public aid. We discussed very briefly the effects of this on public aid and the effects are very simple. Before the 1973 opinion of the Supreme Court, Cook County Hospital was receiving over four thousand people a year who had received abortions through some type of improper procedure and had to come in for medical services. It cost the hospital in those days, twenty-five hundred dollars per person for each of those four thousand people who had had already, had had abortions prior to coming into the hospital, over seven hundred of those people per year died, over seven hundred people of those per year died. Since 1973, they have been performing approximately thirty-two hundred per year, thirty-

two hundred abortions per year at a cost of two hundred and fifty dollars per person. So, I think you can see then instead of spending a little under a million dollars a year for this service, we, the people, are spending over ten million dollars a year for the results of the exact same service. We have not eliminated the service, we will just be paying ten times a year more. I might add that the Supreme Court opinion did not say, did not say, the State should not be providing monies for this. They did say, and I think Senator Lemke is correct in pursuing it, that the State may set the policy and that the Supreme Court will not review that policy. I think it is up to us to set the policy for the people of Illinois. I don't think it will do what many of those who support this want to do and that is to eliminate some of these abortions. There's only one way to do that and I think that is for each of us with a strong church and a strong family, strong counseling to advise each and every one of us who are ever in that situation as to how to best deal with it. I know what my personal choice would be and it would not be for an abortion. But, that does not change my objection to this legislation. I think it takes strong counseling with your clergy, with your family to make an intelligent decision. All this bill does is discriminate against those who can't afford to have the surgery performed in a hospital, forces them to go elsewhere and raises the cost twelve-fold to us, the taxpayers. I think it should be defeated.

PRESIDING OFFICER: (SENATOR DONNEWALD) Senator Netsch.

SENATOR NETSCH: Thank you, Mr. President. Senator Carroll and I were privy to some of the same statistics and information about the experience in at least one area of the State, the number of septic abortions and the death rate that they, in fact, have caused also and I think he has pretty well set forth those statistics. It does not achieve what we think it is going to achieve. There will continue to be abortions, there will continue to be septic abortions, there will continue to be deaths -



on that account. And either on financial grounds, which I don't think ought to be the main consideration or on humanitarian grounds, it simply does not make sense. I think I might share two sentences from the dissenting opinion in the recent Supreme Court opinion. Because the opinion is not that of the usual, if I may use the expression, liberals on the court, but it's Mr. Justice Blackmun's opinion and I don't think he needs any credentials to demonstrate that he is a genuine conservative. Mr. Justice Blackmun said, "the court concedes the existence of a constitutional right, but denies the realization and enjoyment of that right on the ground that existence and realization are separate and distinct. For the individual woman concerned, indigent and financially helpless as the courts opinions in three cases concede her to be, the result is punative and tragic. Implicit in the courts holdings is the condescension that she may go elsewhere for her abortion. I find that disingenuous and alarming, almost reminiscent of let them eat cake. There is another world out there, the existence of which the court, I suspect, either chooses to ignore or fears to recognize and so the cancer of poverty will continue to grow. This is a sad day for those who regard the Constitution as a force that would serve justice to all evenhandedly and in so doing, would better the lot of the poorest among us."

PRESIDING OFFICER: (SENATOR DONNEWALD) Senator Washington.

SENATOR WASHINGTON: Will the sponsor yield to a question?

PRESIDING OFFICER: (SENATOR DONNEWALD) Indicates he will.

SENATOR WASHINGTON: Senator Lemke, would not your bill prevent medical purveyors or doctors from giving adequate treatment to a victim of a rape case or to an incestuous relationship?

PRESIDING OFFICER: (SENATOR DONNEWALD) Senator Lemke.

SENATOR LEMKE: This bill is in conformity with the Supreme Court rule. It does not abolish therapeutic abortions. If it's up to the physician to decide if it's ... if this will jeopardize the ... the woman's life physically or mentally and ... and this will not in any way affect that.

PRESIDING OFFICER: (SENATOR DONNEWALD) Senator Washington.

SENATOR WASHINGTON: Then you interpret mental jeopardy to be the status, the mental status of ... mental attitude of a raped woman or one who has been the victim of an incest, you interpret that language to cover this?

PRESIDING OFFICER: (SENATOR DONNEWALD) Senator Lemke.

SENATOR LEMKE: Yes.

PRESIDING OFFICER: (SENATOR DONNEWALD) Senator Washington.

SENATOR WASHINGTON: Well, Mr. Speaker ... Mr. President, it appears to me that's stretching the language quite far. A clear reading of House Bill 333 indicates quite clearly that if a person is on welfare and goes to a clinic or a hospital for treatment pursuant to a rape situation, or if an individual. the victim of an incestuous situation applies for the same kind of treatment, that this bill would effectively deny it. That seems to be ... to me to be callous and extreme. How can you possibly ask, expect a woman to fertilize and give birth to a child, the offspring of rape or incest? I think it defies common sense and reason. It seems to me that the whole purpose of the Abortion Statute, which I don't necessarily subscribe to or the abortion laws, is to prevent just in a sense, this kind of thing. Even if I could agree with the full support of the Supreme Court decision or this bill, I could not stretch it to that extent. It seems to me that if it must pass, or if it will pass, at least, it must have some clearer exclusions from it than this. I think it's a horrible



bill as cast. I think it's going to do as Senator Carroll and Netsch have stated, is to increase the load. I think it's going to bring unnecessary psychological hardship to people such as I have categorized as the victims of rape and incest. I think it's a ... a poorly conceived bill. I think it's a detriment to the State. I simply don't think the Senate of this great State of Illinois should subscribe to such a theory. I oppose the bill.

PRESIDING OFFICER: (SENATOR DONNEWALD) Do we have leave for the UPI to take still photographs? Leave is granted. Senator Rock.

SENATOR ROCK: Thank you, Mr. President and Ladies and Gentlemen of the Senate. I rise in support of House Bill 333 and I think unfortunately, the issue has been framed as to whether or not there should, in fact, be abortions. That is not the issue. We have passed, in this General Assembly, the Abortion Act of 1975 which was jointly sponsored by Senators Egan and Philip, which attempted to bring some medical sense to the fact of abortion and say that only under limits ... limited circumstances only ... only in ... in closely medically controlled areas could an abortion be, in fact, allowed. That bill, in the provisions thereof, have been enjoined by Federal District Court. This bill ... with or without this bill, abortions will continue, that is correct. But, to throw in the question as whether or not there should be abortion is just simply not correctly stating the issue. And to bring in the fact of rape and incest is simply not statistically valid. If you will talk to the people at County Hospital or any other major medical center that does, in fact, have abortions, few, if any, are as the result of rape or incest. The question before the Body by virtue of House Bill 333 is one of severe public policy. What are we going to allow the taxpayers' money in the State of Illinois to be used for? And I submit to you that the overwhelming majority of the people of the State of Illinois do not want their tax dollars used for abortions and that's the issue and I rise in support of House Bill 333.

PRESIDING OFFICER: (SENATOR DONNEWALD) Senator Maragos.

This is to certify that this is a true and exact copy of the transcript of the debate in the Senate on House Bill No. 333.

/s/ KENNETH WRIGHT

Kenneth Wright
Secretary of the Senate



SENATOR MARAGOS: Mr. President, and members of the Senate, I rise in support of 333 after having been one of those who have kept that bill in committee until the Supreme Court made its decision a few weeks ago, my concern was, first of all, that it met the constitutional grounds, which now the Supreme Court says it has. But, my other concern is this, although I have stated all along that the State should keep out of the private business in many cases, even though I disagree with that opinion of whether a woman should have an abortion in the first trimester, which is the State's law at the present time. By the same token, however, I also say that the State should not encourage it by publicly financing this particular Act. There's where I stand, because now, we say it's all right for the State not to interfere when a woman desires to have it, for whatever reason, by the same token, we do say though they can help her when she decides to do something by financing her and it's unfortunate it has to be in the area of Public Aid that we're talking about, but I'm sure that if even a poor woman has . . . wants to obtain an abortion under the certain circumstances described by Senator Washington, she can find other eleemosynary institutions that will help her get that abortion and she doesn't have to depend on Public Aid. And for those reasons, I vote . . . I will vote in support of 333.

PRESIDING OFFICER: (SENATOR DONNEWALD) Senator Rhoads.

SENATOR RHOADS: Thank you. . . thank you, Mr. President, and members of the Senate. I also rise in support of the bill. I think Senator Rock has stated the issue very clearly. But, I don't think that anyone who has spoken on either side of this issue has spoken with insincerity. This is an issue that you simply cannot debate and change minds on. Either one accepts the premise that the unborn is a human life and therefore the termination of the child is an act of homicide, or one does not accept that premise. I do, and therefore can't vote any other way but yes on the bill.

PRESIDING OFFICER: (SENATOR DONNEWALD) Senator Glass.

SENATOR GLASS: Well, Mr. President, Ladies and Gentlemen. I think that Senator Rhoads is right in one sense, that we're not going to change any votes and I think that's unfortunate. If we would look out into the real world, we would see that the public policy proportedly adopted by this bill is not going to in any way discourage abortions and in fact, it would encourage safety . . . when abortions are performed and as Senator Carroll has so eloquently point out . . . pointed out, there would be significant cost savings to the State. It really is difficult to justify this bill as I see it on any basis, certainly not a humanitarian one and I would urge its defeat.

PRESIDING OFFICER: (SENATOR DONNEWALD) Senator Newhouse.

SENATOR NEWHOUSE: Would the sponsor yield to a question, please?

PRESIDING OFFICER: (SENATOR DONNEWALD) He indicates he will.

SENATOR NEWHOUSE: If a minor child, for example, becomes a rape victim, and is taken to, let's say, Cook County Hospital, would this bill preclude medical procedure that would insure that she would not conceive a . . . a child unwanted?

PRESIDING OFFICER: (SENATOR DONNEWALD) Senator Lemke.

SENATOR LEMKE: If the. . . if the medical personnel at that hospital, or any hospital, determines that this is a. . . that she is in need of a therapeutic abortion, which is a medical determination and is not my determination, she can have it. This will not in . . . in any way reflect on her. Therapeutic abortion can be for physical or mental reasons and I . . . I think that this bill in no way will affect that.



PRESIDING OFFICER: (SENATOR DONNEWALD) Senator Newhouse.

SENATOR NEWHOUSE: Would you read me the language in the bill that would permit such an occurrence to take place?

PRESIDING OFFICER: (SENATOR DONNEWALD) Senator Lemke.

SENATOR LEMKE: Well, the Supreme Court decision allows therapeutic abortions, if they're for emergency situations. If a young girl has been molested and raped and is pregnant and she's in a bad mental state, that abortion will be performed, based on medical testimony by the doctors and I'm looking for that . . . it says here on page 4, lines 19 to 26 is the clarifying language that says this, it's the opinion of a physician if such procedures are necessary for life for the preservation of life for the woman seeking such treatment or . . . so this is a . . . the language. This is a medical termination. I am not a doctor to determine this. This is up to something that happens and this bill does no way affect therapeutic abortions. It . . . it affects voluntary abortions, this is what it affects. Abortions that are performed in the second trimester also, which not even private citizens have.

PRESIDING OFFICER: (SENATOR DONNEWALD) Senator Newhouse, your time is nearly expired.

SENATOR NEWHOUSE: But, the language that you read, Senator, does not cover the case that I posed to you. I did not suggest that the life would be in jeopardy at this stage. So, it appears to me that that case isn't covered by your bill.

PRESIDING OFFICER: (SENATOR DONNEWALD) Senator Lemke.

SENATOR LEMKE: I am not a doctor, I'm not the doctor ruling. Every case is held on its merits. The medical determination on every case, every factual situation. And I think this is what this bill allows to and this is what the Supreme Court says we can allow.

PRESIDING OFFICER: (SENATOR DONNEWALD) Senator Newhouse, your time is expired. Please close.

SENATOR NEWHOUSE: Thank you, Mr. President. My time probably encompassed a lot of other things, but I don't mind yielding the Floor, but, I must say that I did not get an answer to the question that I posed. I'm satisfied with the answer as a nonanswer.

PRESIDING OFFICER: (SENATOR DONNEWALD) Senator Wooten.

SENATOR WOOTEN: Yes, Mr. President. The point that Senator Newhouse made is an excellent one. A friend of mine in this Chamber tells me he votes for all capital punishment bills becase they're all drafted in such haste, they're all unconstitutional and he feels comfortable that nothing will ever happen. I think here, we have a bill that enables us to express the . . . the rage, if you will, that people feel at abortion and at Public Aid. Wonderful when those two emotions can come together and you can get one vote and capitalize on both those feelings. But, the plain fact is, it says here, that except for such aid for the purpose of obtaining an abortion, induced miscarriage or induced premature birth unless, in the opinion of a physician, such procedures are necessary for the preservation of the life of the woman seeking such treatment and so on. It's a . . . you clearly left out two exceptions that have been in the law for a long time and the marvelous thing about this is . . . I believe, by the way, that we probably should have a Right to Life Amendment to the Constitution, but saving that, we're going to force somebody to live up to our ethics. If we can't get the public at large to do it, then by golly, we're going to make the poor do it. I just don't think that's a decent, responsible, human way to behave. And, the thing that really bothers me, is so many people are going to vote for this because it's too hard to explain a rational vote. And, I think we don't do ourselves of this whole process of service, and we vote on emotions. That's



precisely what's happening here. I do not believe in abortions but my ethics and my morals are not determined by what's written in the law, or is that true of anyone who has a true ethical system. And, the compulsion we feel on forcing our own ethics on others, is, I think, the least pleasant characteristic of many public officials. This bill is badly flawed and it's flawed in the very two ways that Senator Newhouse pointed out, Senator Washington pointed out, and that's reason enough to oppose it.

PRESIDING OFFICER: (SENATOR DONNEWALD) Senator Lemke may close.

SENATOR LEMKE: Mr. President, and members of the Senate. The issue is upon us. It's a very important issue to my constituents. It's a very . . . very important issue to your constituents. This is something that my people have prayed for and helped try to pass. We have the Supreme Court ruling that says we can do this, it's constitutional. My constituents and your constituents are the people that pay the bills and they have many times quoted that they do not want their money used for purposes that they feel are immoral. We're talking about their money and this is what we're talking about. Some people reflect to me that we have . . . to have the child, it would cost more. Well, I'll tell you this, my people sacrificed all their lives to provide for their children and for other children through their many charities and churches and they do not feel offended if a child is born is on Public Aid, as long as that child's money that's given to them as a dependent child under Public Aid is properly used. They object when the money is improperly used and improperly spent. And to me, to look back to my childhood, after reading a speech by Ernst Bender, the President of the West German Supreme Court, a country in the thirties and the forties, who suppressed the rights of everybody, not just the unborn, but also the born. I hear the cries from Dachau, I hear the cries from all the concentration camps, I hear the cries of many of the babies that were killed through

the years and we still hear those cries. And, they cry, where's my mother, I want to live and enjoy life. My people came here from East Europe for one reason and that was to have a right to live, a right to be . . . be alive and a right for those people to be alive. When they went to war in World War I and World War II, they fought many times their own relatives for this basic right of freedom and life for all and it's only enough for us to ask, even if it only includes a little bit, to say let's give life to those children that want to be born. This is what we want to do. These children have no voices here. We treat them like baggage and garbage. And they talk about that it is going to lead to back alley abortions. Well, I want to tell you, these clinics that perform these Public Aid abortions, the majority of them are butcher shops. There's no way the Board of Health in the City of Chicago can go in even to make a cleanliness inspection, they're prohibited from doing this. They're resorting to back alley abortions. And, when you look at what's being done by the Department of Public Aid and they're allowing for abortions in the second trimester, this is where life is involved, the second trimester we're also talking about. What's going on? My people don't want abortions being performed with their money. If it costs them more to support these children after they're born, they will pay that money gladly as long as it's properly used. But, if it's for something that they believe is not properly used, and it's going to terminate the life of some person, they are not for it. . .

PRESIDING OFFICER: (SENATOR DONNEWALD)

Senator. . .

SENATOR LEMKE: . . . they did not fight and die in foreign countries, but they fought for the freedom of all people because this is our country. . .

PRESIDING OFFICER: (SENATOR DONNEWALD)

. . . Senator. . .



SENATOR LEMKE: America should lead the way. We shouldn't let West Germany lead us, we should show them that we are the land of the free. I ask for a favorable adoption.

PRESIDING OFFICER: (SENATOR DONNEWALD) Just . . . the question is shall House Bill 333 pass. Those in favor vote Aye. Those opposed Nay. The voting is open. Have all those voted who wish? Take the record. On that question the Ayes are 41, the Nays are 11, 3 Voting Present. House Bill 333 having received a constitutional majority is declared passed. The members of the gallery will please refrain from demonstrations. House Bill 1650, Senator Netsch. Read the bill, Mr. Secretary.

**Illinois House of Representatives, Transcript of Debate on House Bill 333 (November 3, 1977)**

SPEAKER MADIGAN: "Mr. Brummer to explain his vote. Have all voted who wished? The Clerk shall take the record. On this question there are 117 'aye', 44 'nos', no voting 'present'; and the motion having received a Constitutional three-fifths Majority prevails and House Bill 312 is declared passed notwithstanding the veto of the Governor. On the Order of Total Veto Motions there appears House Bill 333. The Chair recognizes Mr. Leinenweber."

LEINENWEBER: "Thank you, Mr. Speaker, I think most of you know the contents of House Bill 333. What it seeks to do is establish the public policy of this state in regard to the expenditure of Medicaid Funds, and that is, to prohibit the state from spending Medicaid Funds for abortions unless the life of the mother is in danger. The issue is, in my opinion, is not whether or not we have abortions or not have abortions. That case, unfortunately, was decided by the United States Supreme Court. The issue is, what should the public policy be in this state in regard to the expenditure of taxpayer's funds. Now this issue was litigated all the way to the United States Supreme Court last spring and resulted in the case of *Maher* versus *Roe*.

The United States Supreme Court stated . . . very clear terms that it is up to the individual State Legislators to determine how Medicaid Funds, how public funds could be spent for medical services for terminations of pregnancy. In other words, the state can use the funds or it can choose not to use funds. It is my position, and I believe the position of all those . . . most . . . vast majority of those people in this state who care —unfortunately there are a lot of people who don't care—but of those people who do care, it is my strong feeling that the vast majority of them favor House Bill 333 and we should make a public policy determination that taxpayers' funds, those funds extracted from our taxpayers in this state, should not be spent for abortions unless necessary to preserve the life of the mother. Now, what reasons should guide this state in determining the public policy? First and foremost, I would suggest to you that millions of people in this state and elsewhere strongly feel that nontherapeutic, nonmedically necessary abortions are immoral and wrong. And I think it is the providence of the state that they take into sound consideration the feelings of those taxpayers whose tax money we vote to spend. Now over and above the overriding consideration of what the taxpayers feel in regard to the expenditure of their funds, I would suggest there are other compelling reasons for the State of Illinois to do what in the terms of *Maher* versus *Roe* the Supreme Court said we could do, and that is, by legislation to prefer childbirth over abortions. I would suggest to you that . . . you talk to people who want to adopt children, and there are thousands of people in this state who this day are waiting to find a child that they can adopt—who for one reason or another cannot have children of their own—thousands of people are forced to go to the black market and pay . . . literally thousands of dollars in attempts to obtain a child that they can raise. I would suggest to you that the overriding reason why there are no children available in the State of Illinois and elsewhere is the policy of this state currently to spend taxpayers' money to abort the unborn. Another compelling reason for the state, I think we should look to the fact that we are now in the State of Illinois



and elsewhere, at below zero population growth. I would suggest to you that it is a very sound fiscal reason for the state not to encourage the destruction of its unborn, and that is, to consider the fact that when those of us reach retirement age, that we do have some children left to supply the money to pay for our retirement and to take care of us. Very briefly, I don't want to dwell on the issues raised in the Governor's Veto Message. All of those issues were argued extensively in Committee and on the floor of this House last spring when we overwhelmingly adopted House Bill 333. There was nothing new raised by the Governor, they've all been considered before. The Equal Protection Clause of the Constitution is not violated by House Bill 333. The United States Supreme Court has made that very clear. As far as the back alley butchers, I would suggest to you, you go back and read some of the articles in the Chicago press about the so-called abortion clinics in that city which literally hundreds of people per day go through there obtaining quickie abortions. I suggest to you that you read those exposés and determine for yourself whether or not those people who currently stand in line to obtain abortions are receiving proper medical care. I would suggest to you that with the present cost of abortions in these clinics that we aren't causing any particular hardship that would . . would resurrect the back alley abortionists. Again, are we being fair to the poor? Well, for . . . first of all, there's no equal protection problem because the state would not provide anybody with a free abortion unless it's medically necessary. What about reverence for life . . . to have these hundreds of people go through during their lunch hours to obtain abortions? What about the counseling these people receive? What kind of counseling do you receive when you run through a hundred people a day? I would suggest to you that the emotional scars that these procedures leave on these people is a good reason not to be so fast and ready with the state's money to provide them with these free abortions. What about rape and incest? First of all, it should be enough to say that they are virtually unheard of. And I would just point out that the Bill does not prohibit an

abortion. All the Bill addresses is the question of the expenditure of taxpayers' money. And I might say that to suggest to you that the scars of a rape or an incest are not going to be eradicated by an abortion. And I would suggest further that it's quite possible additional scars will be heaped upon those already there. Finally, I'd like just to point out that the unborn is a separate, distinct human life. And this is not a theological argument, this is a biological and genetic fact. The unborn is not potential life but is human life with potential. And I'd like to share with you the words taken from the yearbook of Obstetrics and Gynecology in the year 1940, and I think they're very apropos. 'At the present time when rivers of blood and tears of innocent men, women and children are flowing in many parts of the world, it seems almost silly to be contending over the right to life of an unknown atom of human flesh in the uterus of a woman. No, it is not silly. On the contrary, it is of transcendental importance that there be in this chaotic world one high spot, however small, which is safe against the deluge of immorality and savagery that is sweeping over us that we, the medical profession, hold to the principle of the sacredness of human life and of the rights of the individual, even though unborn, is proof that humanity is not lost'. In closing, Mr. Speaker, Members of the House, I would suggest that the public policy of this state ought to be that embodied in House Bill 333. I therefore, Mr. Speaker, move that House Bill 333 do pass, the veto of the Governor notwithstanding."

SPEAKER MADIGAN: "Mr. Kelly."

KELLY: "Thank you. Mr. Speaker, Members of the House, I rise to support Representative Leinenweber in House Bill 333. In my opinion, this is the most important subject which will come before this Body during the Fall Session, and that is to protect the lives of not only thousands but in reality, millions, of unborn children who will be aborted by use of Public Aid Funds. Now I resent my tax dollars being used to



finance abortions and I know that many of my constituents join me in this particular view. It seems to me that the taxpayers should have something to say about how their tax dollars are being spent. House Bill 333 is consistent with the efforts which are being made in Washington. And it's also consistent as Representative Leinenweber pointed out with the recent decision of the U.S. Supreme Court which proclaimed that states can make this determination. You know, Ladies and Gentlemen, life is a precious thing and we have a responsibility not only to our forefathers but to mankind to maintain and defend the rights of the unborn. I gladly rise in support of Representative Leinwenweber's motion."

SPEAKER MADIGAN: "Mr. Gaines."

GAINES: "Mr. Speaker and Ladies and Gentlemen of the House, it intrigues me that the persons who are hollering the loudest to deny the rights of a legal abortion to poor people don't have poor people in their districts. It also amuses me, and also disdains me, that they're mostly the same ones who vote not to give these children subsistence in terms of public aid once they get here. They say, 'Bring them in then starve them to death. Bring them in then don't give them adequate health care so they catch something else and die'. These are not the people who want more medical care for babies of a public aid recipient. And I'm quite sure that if some grotesque imbecile inpregnated their daughter or wife they'd find an abortion center. I'm quite sure that the rights that they want to deny persons because they are on public aid are rights that most of the people in their districts cherish even though they may be secretly rather than publicly. I do not feel that persons because they're on public aid should be denied a legal right. They talk about the court decision. The court decision says it's just as legal not to have this restriction. It does not say you have to have this restriction. And the whole country agonized on this issue . . . and taxpayers on both sides. So no matter what you do, some taxpayer is going to have his money spent or not spent as he or she does or does not see fit. I don't hear these people getting up defending the rights of the poor to have other things

other than babies. Then the same ones will get up later when we have the Pubic Aid Budget and swear up and down that they have babies just because they want to raise their level of subsistence. You can't have it both ways. So therefore, I'm urging you to support the courageous stand of our Governor. Thank you."

SPEAKER MADIGAN: "Mr. Mugalian."

MUGALIAN: "Thank you, Mr. Speaker. I think that the aim of the law should be to reduce the degree to which governments treat their citizens differently. For example, the criminal justice system is, or should be, judged on whether all defendants receive a fair trial regardless of their station in life and regardless of their financial resources. This concept pervades our Anglo-American jurisprudence and has been incorporated into our State and Federal Constitutions . . . equal protection under law. No person may be deprived of life, liberty or property without due process of law. Which means that all persons are entitled to due process. The perfect law, Ladies and Gentlemen, and perfect laws would not permit a small differential in treatment. It would permit no differential. Equality of opportunity, equal access to the marketplace, equal guarantee of civil liberties, equal educational opportunities, equitable criminal sentencing, that's what it is all about. This is an ideal toward which we must strive although we may never obtain it. It has an ancient honorable origin from Aristotle who spoke of distributive justice. Who St. Thomas Aquinas, the Magna Carta, our Declaration of Independence and the U.S. Supreme Court decision, in Brown against Board of Education. House Bill 333 does violence to that concept. It is a step backward. In the Governor's words, 'It is also cruel'. House Bill 333 is essentially a selfish assertion of private, personal, judgmental morality. It says, 'You shall not use my tax monies for what I consider personally objectionable'. Not only is this sentiment selfish, it is grounded on money selfishness. Or at least it is only operative against the poor. HB 333 asserts . . . it asserts, 'I don't care that this strikes the poor, the frightened,



the weak. Thou shall, if thou are on welfare, bring the result of violent rape or incest to full term. I can't impose my standards on the well to do but I can impose them on you and I will'. That's what that Bill asserts. Now it may be argued by proponents of this Bill that it only goes part way in preventing abortions but that that is not the fault of the Sponsors. It is a step in the right direction they will urge. I suggest that this step . . . step makes the situation far worse. That it creates a form of apartheid. That it walls off the poor. The anti-abortionists would probably settle for a law that would prohibit all abortions except those to save the mothers' life and except in cases of rape or incest. Not all of them would, of course, but that would probably represent to them an acceptable compromise. Surely they would extend these three exceptions to welfare women. But HB 333 says to the poor, 'You and only you, cannot terminate a pregnancy resulting from rape or incest. The U.S. Constitution may protect only the well to do'. The Governor says that quote, 'He can understand the intent of the Sponsors and Members of the General Assembly but that they did not, 'intend the cruel result'. I suggest that the Governor is placing tax above candor. But be that as it may, there can not now be any misunderstanding as to the invidious discriminatory effect of this legislation. Therefore, Mr. Speaker, the effect and the intent are now unmistakable. I urge you all to sustain the veto."

SPEAKER MADIGAN: "Mr. Ewell . . . excuse me, Mr. Mann was up prior to Mr. Ewell. Mr. Mann."

MANN: "Thank you, Mr. Speaker. I don't think anyone in this House has more respect for the Sponsor of this Resolution than I do. I think that Representative Leinenweber speaks with great sincerity on all issues, including this one. And I must also bare my soul to the extent that I am troubled by what would seem to be a contradiction between my concern for life, as evident by my Sponsorship of Capital Punishment Abolition Legislation and then my position on this legislation. I don't feel qualified to get into a metaphysical or medical colloquy on

whether or not life starts at a different time or period during pregnancy. But it does seem to me that we are now witnessing one more example where government is coming down on the poor. There are close to two-hundred-thousand women living below the poverty line in the State of Illinois, who have to raise babies on thirty-four cents a meal in this day and age. And where, despite our pleading and begging, we can't get even a five percent cost of living increase. Even though the cost of living has gone up seventeen percent since the last cost of living raise was granted. Secondly, we can't even get prenatal care for these two-hundred-thousand women because the double standard of color and poverty prevails in our entire health care system. Third, here we sit over one-hundred and fifty men voting on the lives and the bodies of women. And I just wonder if that is an appropriate thing to do. I think that a woman should have some control over her own destiny, over her own life and over her own body. Finally, I would say this to you, in the State of Illinois where you have about a million and a half people living below the poverty line, the poverty line not set by Russia or some other country but set by the United States of America, people who are denied equal justice before the law in our courts, equal health care in our hospitals; for how long do you think these people are going to take government tyranny and government abuse when it comes to them? I would suggest to you that when you cast this vote, you search your minds and your hearts. You recall, if you will, the double standards that permeate our society throughout. You know and I know that a wealthy affluent woman in Chicago and in the State of Illinois can get an abortion any time she wants to, anywhere because she has the means to do so. You don't say that you're going to deny her deductions on her income tax. You don't say that you're going to discriminate against her in terms of access to private medical care. But what I'm saying is . . . I'm about to conclude, Mr. Conti, I'm about to conclude."

SPEAKER MADIGAN: "Mr. Conti."

CONTI: "Mr. Speaker and Ladies and Gentlemen of the House, point of order. We've got an awful lot of Bills to discuss and Bradley . . . the Chairman up there before suggested that



we speak not on the merits of the Bill. This Bill was discussed in full length. What we should be doing here is deciding to override the Governor's veto or not. The last three Gentlemen who talked spoke on the merits of the Bill. And I think that we're going to be here until 3:00 in the morning if we discuss the merits of each and every Bill. The issue here is to override the Governor's veto or not to override it."

MANN: "Well, to the distinguished Gentlemen and my friend, Mr. Conti, I've been here 15 years and I thought Members had a right to speak on issues. And I'll never cut you off, Sir. And it's not an Amendatory Veto, it's a total override. I'll conclude by saying that I hope you weigh this issue and your conscience and then vote."

SPEAKER MADIGAN: "Mrs. Dyer."

DYER: "Very briefly, Mr. Speaker and Ladies and Gentlemen of the House, certainly no one has more respect for the Sponsor than I. We agree on many other important issues. So when I make my three quick points I hope he'll remember I'm speaking about the Bill and not the Sponsor. There are three reasons why this is a very harmful Bill and why the Governor's veto should be sustained. First, as a woman, as a mother and as a grandmother who has just welcomed a new grandchild with great joy, this summer, I'd like to point out to the Sponsor that the normal, natural thing is for a baby to be wanted and to be welcomed and to be provided for. That is the natural pattern of humanity. When any woman is desperate enough to even think of abortion she's already gone through a traumatic stage. This Bill does not permit her even to abort a fetus even in cases of rape, incest or in a prediction of fetal deformity. So even if there are predictions that the child is going to be mongoloid, under this Bill the poor women in this state will go on and have to bear this type of child. I think that's a very unfortunate aspect. Second, I think everyone in this room should be mindful of the fact that the health insurance plan paid for by taxpayers, available to the General

Assembly, whose salary is paid for by the taxpayers, does include coverage for abortions. So, I think that the Bill is hypocritical in that sense. Thirdly, I think we should remember the historic separation of church and state in this country. The Supreme Court has very wisely said that every woman in the first trimester has the right of individual conscience to decide with her physician whether or not she wants an abortion. We're taking away this right now from poor women. And I'd like to warn every Member of this General Assembly to think how they would feel if one day a member of Jehovah's Witnesses happens to be a Representative here and wins enough clout and enough influence to pass a Bill saying there should be no more blood transfusions. Or if a Member of the Christian Science Church gains enough power to say that we can't have any medical insurance of any kind because we believe in spiritual healing. I think we have to keep church and state separate. I think that the Governor's veto should be sustained."

SPEAKER MADIGAN: "Mr. Ewell."

EWELL: "Mr. Speaker, Ladies and Gentlemen, I sit here and listen to the voice of the righteous who will now impose for all people, their will. They say that they are sensitive men. And that they have feelings and they understand. They are so sensitive that they will tell us they can even hear the unborn cry. But yet, these same Gentlemen do not see these children when they come here and live in misery, squalor and poverty. They say we can not see them, for they are costly. They say they hear the unborn, but they have no feeling for the uneducated and the unemployed. When the time comes to pay the bill for the education because these children are unfortunate, they say 'No, no. We believe only in a system where everybody pays their own cost.' These Gentlemen, sensitive as they are, refuse to even speak for the weak and the unfortunate and those who have no voice. But even beyond that, they refuse to even read the Veto Message of their own Governor. For there the entire thing is laid out, what the Bill does and what the Bill does not



do. And I certainly do not have to read this Bill for you or the message for you. But I would like to quote the Governor's final line, in which he says, 'In the end a man can act only out of sense of duty and conscience. The Constitution of Illinois confers that duty upon the Governor and my conscience has told me how to answer it, whatever the political cost.' That, Ladies and Gentlemen, is a statement of political courage. I too will join the Governor because he is right. And I suggest to the Members of the other side of the aisle, it's very easy to run when you think you can help yourself and your district pick up a vote or two here. But remember, you keep chopping, whittling down your Governor, you're going to have nothing left to hide behind and the people will soon see you. The Governor is correct in the message, he's entirely right and I will answer my conscience and I will support him in his Veto Message. Thank you."

SPEAKER MADIGAN: "Mr. Telcser."

TELCSER: "Mr. Speaker and Members of the House, I rarely, if ever, get up to speak on a subject such as this. In the past I've cast my vote and that was it and I really had intended to do that today only. But a prior speaker, the Lady from DuPage, I think really very succinctly hit the nail on the head when she alluded to the fact that the court, based upon their decisions I think, would clearly rule this piece of legislation, should it become law, unconstitutional. The fact that it eliminates situations such as rape and incest clearly makes this piece of legislation, in my opinion, so restrictive and so narrow that it is unlikely that any court would uphold the constitutionality of this piece of legislation. That, I think, is a very important point. It's a point which I think that every Member ought to consider, regardless of how they believe the other facts fall upon this question. I believe that the Governor did do a courageous thing when he vetoed this piece of legislation. As the prior speaker, I think that he ought to be sustained, I hope he's sustained and I urge every Member to vote to sustain the Governor's Veto on this particular Bill."

SPEAKER MADIGAN: "Mr. Davis."

DAVIS: "Mr. Speaker and Ladies and Gentlemen of the House, I rise to support the convictions of the Governor of the State of Illinois on House Bill 333. And I also want to say, in his Veto Message, he has made the most profound statement any Governor has ever made in his veto. Surely, this statement will be included among the great statements that men of past ages have made. And I will quote, 'I hereby return House Bill 333, witholding my approval and ask you to prayerfully and carefully consider the human consequences involved. If you reaffirm initial decisions . . . your initial decision that this Bill shall be law, prayerfully consider.' That is the most profound statement because that's exactly what I've done. A lot of people were down here, I guess two weeks ago and they came to me, some of them from the various churches on the south side, some of them even from my church and said, 'We came down here. We're going to stop this abortion. We're opposed to them and we're going to stop them.' And I said to them, 'That's your right. But you're not going to stop abortion because the Supreme Court has pointed out the Constitutional Rights of women to have abortions.' I said, 'What you're going to do is stop poor women from using Public Aid money for abortions. That's all you're going to do. Instead of coming down here picketting us in the General Assembly, you ought to be in Washington picketting the Supreme Court because they're the ones who rendered the decision, not us. We simply are lawmakers and they are the highest law interpreting body in the world . . . in our country rather. And that they have said that it's the woman's Constitutional Right. Now everybody's talking about, the Supreme Court is talking about . . . saying about the state doesn't have to appropriate money. Well, I want you to know that with some dissenting justices in that decision, Justice Brennan, Justice Marshall and Justice Blackmun, this is what they said. 'If a state must pay the cost of a live child's bread, as a necessity, medical expenses, it must also pay the costs of elective abortion. For the procedure in each case constitutes necessary medical treatment for the condition of



pregnancy. Therefore, the state cannot contend that it protects its fiscal interests in not funding elective abortions when it would cause far greater expense in paying for more costly medical services performed in carrying pregnancies to term. And after birth, paying the increased welfare bill incurred to support the mother and the child.' Now, I respect every man's religious convictions and every woman's religious convictions. Back in the 20's I was a Scout Master and I heard a beautiful speech on the floor by one of the young men who was in my troop in those days. I went down in West Virginia, when a man I regard as a great liberal was running in the Democratic Primary to oppose John Fitzgerald Kennedy. And I spoke with a lot of feeling down there and a lot of people came to me and said, 'What's wrong with you? Are you really against Mr. Humphrey?' And I said, 'No, I'm not against Mr. Humphrey, I'm for Mr. Kennedy. And I'm going to tell you why I'm for Mr. Kennedy. We've got an opportunity here to kill two birds with one stone. One is the old bird known as 'religious prejudice' and the other one known as 'racial prejudice'. And I'm down here to take a shot at him.' And we took a shot at him and the results are that Kennedy finally went on and was elected as President of the United States. The first Roman Catholic ever to be elected. And my heart was proud. And certainly of his performance, there's no question about what he started the ball 'a rolling in this nation that resulted in the things we enjoy. I was absolutely right. I know I was right and I respect your religious convictions but let me tell you this; when someone comes to me, as a preacher, talks to me about an abortion and wants my advice, do you know what I'd tell him, confidentially? It's better to have that child on your knee than to live forever with that child on your conscience. That's the way I feel about it, personally. But this Bill is simply a Bill robbing women of their Constitutional Rights simply because they're poor and I think we ought to rise, irrespective of any political consequence, we ought to rise to the dignity of the occasion and support the Governor who has made, I believe, one of the most important statements that has ever been made

by any Governor. And he said that he made it prayerfully and I think that that's a great statement and I plead with you now. Forget about the political consequences and uphold this man when he's right."

SPEAKER MADIGAN: "Mr. Kosinski."

KOSINSKI: "Mr. Speaker, I feel that minds are well made up, no additional rhetoric will change any votes and in the interest of time, I respectfully move the previous question."

SPEAKER MADIGAN: "The Gentleman moves for the previous question. All those in favor signify by saying 'aye', all those opposed by saying 'no'. In the opinion of the Chair, the 'ayes' have it and the motion carries. Mr. Bradley, to close the debate."

BRADLEY: "Well, Mr. Speaker and Ladies and Gentlemen of the House, I would like to respond to some of the Members who I'm sure very sincerely opposed this legislation. It's a relatively simple Bill, as Representative Leinenweber has explained. It does not prohibit anybody having an abortion. It prohibits the people who are on welfare from having an abortion. One Member of the Assembly suggested that we who sponsored this legislation for a number of years were not responsive to those who are not as fortunate as maybe we are. I would suggest to those Members that they look at the voting record of all of us concerning the Education Bill. Title One . . . The Title One money that we send to those people who are in dire need insofar as education, whether it be in the East St. Louis area where we contribute over $11,050 per student in that particular school system and I supported that legislation and I support Title One. I know some school children are receiving a flat grant. There's no question about the need. I believe the budget in the State of Illinois, almost one-third of it, which I support, Representative Leinenweber supports and other Members support. Over one-third of our funds go to the needy. Mr. . . . One Member of the Assembly has some question about the . . . his position regarding the Death Penalty and the Bill we are



facing here today. Let me quote to you from the *Chicago Sun Times* on Wednesday, November 2nd. 'A Federal Family Planning Expert said Monday that the vacuum method of abortion also should be used much later in pregnancies than is now customary because it is cheaper, safer, psychologically less wearing on the women than other methods.' They go on to say, 'For abortions later than the 12th week the standard procedure involves inducing labor in the woman to expel the fetus.' And this is the . . . I would like to underline this next, the last part of that sentence, 'inducing labor on the woman to expel the fetus which is killed earlier by a salt solution.' It's also . . . the Governor's message has been quoted rather extensively. I'd like to quote from the message also, because I did read it. And in the third from the last paragraph he says, 'I understand that in vetoing this Bill I depart from the position expressed by the President of the United States, the Congress of the United States, the Department of Health, Education and Welfare and the General Assembly of the State of Illinois. I also believe, in so acting, I am going against the sentiments of the majority of the people of Illinois.' I read the message on more than one occasion. And those words struck home to me more than anything else. The majority . . . the majority of the people of the State of Illinois, regarding the question of the Constitutionality, I think that question has been resolved by the Supreme Court of this nation. So, I would simply urge that those people who voted for this Bill when it came through this House some time last spring vote again to pass this Bill, notwithstanding the veto of the Governor. Thank you."

SPEAKER MADIGAN: "The question is, shall House Bill 333 pass, notwithstanding the veto of the Governor? All in favor signify by voting 'aye', all those opposed by voting 'no'. Mrs. Willer, to explain her vote."

WILLER: "Yes, Mr. Speaker, I voted 'present' on this last spring because I believe the Bill was unconstitutional. The courts have declared it is not unconstitutional, we may pass this legislation. I'm voting to support the Sponsor to override the veto of the Governor because I truly believe that the 'embryonic child' as President Carter phrased it, is a human being with the same values I have. I do not cast my vote because of religious convictions. I quarrel with the Catholic Church on most other issues, quite frankly, involving sexuality. I am not casting my vote on the basis of what's popular in my district. I just took a poll, over fifty percent of the people in my district favor the Supreme Court Decision. I have reason to believe they will not like me for this vote. Certainly, the people who supported and helped me get elected are horrified at my vote. They have called me constantly about it. This is a vote of my conviction that the fetus is a human being. This is saying I believe therefore it has the same worth I have. I am appalled and I would just say I hope the Sponsor doesn't really feel that . . . I hope he doesn't try to perpetrate upon the people of Illinois the idea that the children born, because of this action we are taking, will be wanted, will be adopted. Let's not kid ourselves. This is a cruel Bill. I know it is and we should admit it but it is not as cruel as destroying the fetus and that is why I'm casting my vote."

SPEAKER MADIGAN: "Mr. Johnson, to explain his vote."

JOHNSON: "Through all the discussion by the opponents of this Bill, the one thread that weaves through their comments is concern for the underprivileged or the poor. I share that concern but they all ignore and all the discussion has ignored one group of the poor who are not afforded protection but through the passage of this Bill and that's the unborn poor. The unchild . . . or unborn who might grow up to be a physicist or an author or if he's really unlucky, a Legislator or something that's going to be productive for society. I think we're making a



value judgment that somehow the unborn poor have less a right to protection and less a right to life than other people do. And I think that that's a protection that society ought to afford everyone, the right to life. And that's more important in my judgment than any other single right we have."

SPEAKER MADIGAN: "Mr. Deuster, to explain his vote."

DEUSTER: "Very briefly, Ladies and Gentlemen of the House, the question is not here anything to do with individual rights. This legislation does not grant, expand or limit or take away anybody's individual rights. What this legislation does is simply establish the public policy that the people expect to establish in the State of Illinois with respect to the attitude toward life and toward the attitude of what some of us don't like to refer to but what it really is is the killing of unborn children. We are not taking away the Constitutional Rights that have been recognized by the Supreme Court. An individual person anywhere in the State of Illinois can choose to terminate a pregnancy or have that child in the womb killed. What we are doing is saying, 'We're not going to promote it, we're not going to subsidize it, we're not going to reach into the pockets of the taxpayers of Illinois and force them to pay for something that they think is wrong and they think that's something that should be discouraged as a matter of public policy.' The rights remain, what we're doing here is not subsidizing and promoting that practice."

SPEAKER MADIGAN: "Have all voted who wished? Have all voted who wished? The Clerk shall take the record. On this question there are 126 'aye', 42 'no', no voting 'present'. The motion, having received a Constitutional three-fifths majority prevails and House Bill 333 is declared passed. Notwithstanding the veto of the Governor."

**Illinois Senate, Transcript of Debate on House Bill 333 (November 17, 1978)**

SECRETARY: I move that House Bill 333 Do Pass the Veto of the Governor to the contrary notwithstanding. Signed, Senator Lemke.

PRESIDING OFFICER: (SENATOR ROCK) Senator Lemke.

SENATOR LEMKE: I move to override the Veto . . . the Veto of the Governor on . . . on House Bill 333, which is the funding of abortions by the State of Illinois if we fail to pass this bill. This bill will prohibit it and I ask for a favorable vote.

PRESIDING OFFICER: (SENATOR ROCK) Is there any discussion? Senator Smith.

SENATOR SMITH: On one or two previous occasions here in this Body, I have talked one way and voted another with regards to one or two measures during my long term of attempted service here in the Illinois State General Assembly. With regards to this bill, I'm going to vote contrary to my intellect. I remember not long since when the former President of this Body came to me and asked of me that I support a bill that some of us have been under the impression would come before us anew in this Session. I spoke against that bill or resolution as it was and to satisfy him I voted for it. I have been asked to vote a given way with regards to this particular measure and I have been informed by letters since I arrived here this week by the same groups that came to me to support a particular position with regards to my vote on this particular matter that the good Senator has now seen fit to bring forward. I didn't understand the reasoning of those who came to me. They're from my district and I had thought that perhaps their views concerning this measure were the same as mine, but it so happened and developed that it's contrary to all that's a part of me. They ask of me to vote Aye on this measure. I'm going to do that. Not that it is my reasoning nor is it my belief that the



Senator's motion will prevail, but to satisfy those who have voted for me consistently, a goodly number of years, I reflect not my own view, I reflect their view by my vote. Yes, as I will when we reach that period.

PRESIDING OFFICER: (SENATOR ROCK) Senator Wooten.

SENATOR WOOTEN: Thank you. Mr. President and colleagues. I am one of the few people in this Chamber who will vote to sustain the Governor's Veto on this measure. And I do so in spite of the fact that I am opposed to abortion, principally on biological rather than religious grounds. I think there simply is no argument that life is a continuum from conception to death. But unfortunately, this really doesn't address that problem. And I think we are most responsible as Legislators when we think clearly into an issue before us. Please remember what this bill does not do. It does not outlaw abortions, it does not prevent abortions, it does not limit the number of abortions. All it does is deny money to people on welfare who elect to have an abortion. To me there is something faintly obscene about that. I believe that in this bill we are venting our anger and frustration at not being able to outlaw abortions because of the Supreme Court decision. We're also venting anger and frustration that many people feel against anyone on welfare. So we're letting an emotion guide our vote on this and a feeling which will circulate through the State that somehow we have actually done something to halt abortions. It does not do that at all. It simply says that women who choose to have abortions will continue to have them, but the poor must really bear a burden. A financial burden if they choose to have them. Wealthy, okay. Middle class, no problem. The poor we're going to make it tough for you. I don't think that's a moral vote. And because of that I simply have to sustain the Governor's veto of this bill. I think the one really correct thing he's done since he's been in office.

PRESIDING OFFICER: (SENATOR ROCK) Senator Rhoads.

SENATOR RHOADS: Thank you, Mr. President and members. I had not intended to speak, but since Senator Wooten has raised a couple of issues I . . . I think it's important to make a couple of observations. Number one. It's the easiest thing in the world to impune the motives of those who disagree with you. I think the rule in this Chamber ought to be that the motives of those who . . . with whom we disagree are, at least, as honorable as our own. Number two. Those who disagree with the Roe versus Wade decision do so because they view this as an act of homicide and because they view the public subsidy as paying for that act of homicide. It is not a move to punish poor people and it is unfair to suggest that it is.

PRESIDING OFFICER: (SENATOR ROCK) Is there any further discussion? Senator Wooten, for what purpose do you . . .

SENATOR WOOTEN: In response to Senator Rhoads, I think I must draw an even finer distinction. Maybe I should say I believe there's a self deception involved here. I believe that Senator Lemke's motives are absolutely strong and straight forward, as are the motives of most everyone who votes on one side of the issue of this or the other. I simply believe we're deceiving ourselves and I believe that in permitting that to happen I find something very uncomfortable in that. I believe it is a self deception.

RESIDENT: Senator Rock.

SENATOR ROCK: Thank you, Mr. President and Ladies and Gentlemen of the Senate. I rise in support of the motion to override the veto on House Bill 333. I have had some correspondence with the Director of the Department of Public Aid and while I will agree with the speakers, as we discussed when the bill was up for passage last Session, this is not the outlawing of abortion, it is an expression by this Assembly, a



matter of public policy that we, the people of Illinois will not subsidize abortion. Twenty-four thousand eight hundred and eleven abortions were performed with public monies last year. Three point three million dollars. I happen to agree with Senator Rhoads. It's homicide and for us to subsidize it, it's just plain wrong.

PRESIDENT: Senator Glass.

SENATOR GLASS: Thank you, Mr. President and Ladies and Gentlemen. I rise in opposition to the motion and in support of the Governor's Veto, which I think, was an extremely courageous act and would point out to the Body that although you can say that it doesn't deny abortion to anyone, in fact, that is not true. Anyone who cannot afford abortions and is on Public Aid will be denied an abortion and . . . and may very well choose an abortion from an illegal source, which may end up in far more serious consequences and may land such people back in . . . in hospitals. I'd also point out that victims of rape or incest will not have the opportunity to choose whether or not they should terminate pregnancies under this legislation or where there is likelihood of a fetal deformity or . . . or serious threat to their physical or . . . psychiatric health. And I think, probably, the best statement we can make in support of this veto by the Governor is his own statement in the Veto Message, which, if you haven't read, I certainly commend it to all of you. He says, at heart though, this bill simply denies a constitutional right to some women because they are poor. My belief is, that such women will, in many cases, attempt to terminate unwanted pregnancies and other more desperate ways. Those ways may lead to needless death and suffering of mothers and children. I agree that life is often unfair and that it is not within the power or duty of government to rectify all perceived wrongs or to satisfy all expectations. But this bill is more than unfair. It is cruel. I cannot, in conscience, put my name on such bill. That is right on point, Ladies and Gentlemen, and I would urge a No vote on this motion.

PRESIDENT: Senator Knuppel.

SENATOR KNUPPEL: Well, it's silly to argue that somebody on Public Aid ought to have a Cadillac because if they don't get one they'll go out and steal a car. That's just how consistent . . . inconsistent the arguments are. And I'll say this, most of the members on this Floor that vote for this bill . . . or vote for the Governor's Veto and against an override are the same people who vote against capital punishment. Now I tell you, when a person is born and lives in this world and has a chance to know what the laws are and you tell me that person ought not to be put to death under capital punishment, but yet you admit that conception is the start of life and that you should be able to take that life before birth, when that child hasn't had a . . . chance for redemption, it reminds me of an article I got through the mail the other day and it read something like this, you know, vote for this bill or vote for the Governor's to sustain the Governor's Veto because if you don't there'll be a lot of unwanted children and if they're unwanted children, there'll be a lot of child abuse and, you know, kill them before they're born so there won't be child abuse. It . . . the . . . the logic of these arguments that a person will go out and get a cheap abortion if . . . if we don't provide one with tax money. Now you see that tax money, part of it's mine. Now I don't believe in whiskey either and you'll never see me buy a drink for any of you guys. I don't want to pay for somebody's abortion either.

PRESIDENT: Is there any further discussion? If not, Senator Lemke may close the debate.

SENATOR LEMKE: Mr. President, members of the Senate. The issue is back to us. It's a sorry day in Illinois when we have to have an issue come back for an override while we're trying to protect somebody's life on a bill. We heard the reasonings why that the poor should have abortion, because they're going to bring up children that might not be able to cope with life, financially, and they should have this choice. Or they're going to go to the back butcher shops in . . . in the



alleys. Well, I'm telling you, they go to the butcher shops now. Two butcher shops were closed down in Chicago for legal abortions, legal abortions. And there's more going on because the Board of Health cannot go into these clinics and we look at the newspapers, which is a sorry sight. They play in their advertisement on little girls who become pregnant or girls that are lost in the big city who become pregnant. They don't tell them the consequences at these clinics, because these clinics are set up to do one thing and that's to make money. They don't tell them that maybe you shouldn't have an abortion. They don't tell you about the problems you're going to have later in life mentally because you had an abortion. And the people that end up in mental institutions or end up with a mental disturbance because they feel that they killed their child and they can't have any more. And we hear this about poor children not having everything in life. Well some of the greatest people in this society that come in history came from poor families and they raised themself and they pulled themself up and worked and some of these children. Gentlemen, were children that were born in incest. Like . . . and some of them were born in legal incest, like Toulouse-Lautrec, one of the greatest painters. Legal incest, because we passed the Statute. Who are we to judge whether someone should live and die when we had nothing in the make in . . . in his creation. We have not that right. But take one step further, Gentlemen and let's look back not too far ago and let's look at World War II and let them choose in Nazi Germany as to who should live and die, who should go in the ovens, who should be shot, who should have children, who shouldn't have children. Let the government decide, let big brother do the business. That's what we're talking about. We have in this State a chance to do something that's constitutional. And that's where I disagree with the Governor. This a constitutional thing because the Supreme Court has ruled it's constitutional it's within the States prerogative. My taxpayers and I'm sure your taxpayers who feel they are moral people, do not want to have their money used

for something they feel is immoral and that's the killing of a child. So I ask for an override and a favorable vote for this override of the Governor's Veto. Thank you very much. Gentlemen.

PRESIDENT: The question is shall House Bill 333 pass the Veto of the Governor to the contrary notwithstanding. Those in favor will vote Aye. Those opposed will vote Nay. The voting is open. Have all voted who wish? Have all voted who wish? Take the record. On that question the Ayes are 40 . . . for what purpose does Senator Washington arise? Senator. the request is out of order at this point until I have announced the . . . the vote and then the verification will be in order. On that question the Ayes are 42. the Nays are 12. 1 Voting Present. And House Bill 333 having received the required three-fifths vote declared passed. the Veto of the Governor to the contrary notwithstanding. Senator Washington has requested a verification of the roll call. The Secretary will please verify the affirmative votes.

SECRETARY: The following voted in the affirmative: Berning. Bloom. Bowers. Bruce. Chew. . . . that's wrong. Clewis. Coffey. Daley. Davidson. Demuzio. Donnewald. Egan. Graham. Grotberg. Guidice. Harber Hall. Kenneth Hall. Johns. Joyce. Knuppel. Kosinski. Lane. Lemke. Leonard. McMillan. Maragos. Merlo. Mitchler. Nimrod. Ozinga. Philip. Rhoads. Rock. Rupp. Sangmeister. Savickas. Schaffer. Shapiro. Sommer. Soper. Vadalabene. Walsh. Mr. President.

PRESIDENT: Senator Washington. The roll call has been verified. For what purpose does Senator Vadalabene arise? Senator Vadalabene moves to reconsider. Senator Johns moves to Table that motion. All those in favor signify by saying Aye. Opposed. The Ayes have it. So ordered. Messages from the House.



**IN THE UNITED STATES DISTRICT COURT**
**FOR THE NORTHERN DISTRICT OF ILLINOIS**
**EASTERN DIVISION**

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|---|---|
| **DAVID ZBARAZ, M.D., et al.,** ***Plaintiffs,*** **vs.** **ARTHUR F. QUERN, etc.,** ***Defendant.*** | No. 77 C 4522 |

**PLAINTIFFS' MOTION FOR LEAVE TO HAVE JANE DOE JOINED AS A PARTY PLAINTIFF, FOR LEAVE TO HAVE HER PROCEED UNDER A PSEUDONYM, AND FOR LEAVE TO FILE A SUPPLEMENTAL PLEADING**

Plaintiffs move this Court, pursuant to F.R.C.P. 11, 15, 20, and 21, for leave to have Jane Doe joined as a party plaintiff, for leave to have her proceed under a pseudonym, and for leave to file the amended and supplemental pleading attached hereto. In support of this motion, plaintiffs state:

1. Jane Doe is a pseudonym for an indigent pregnant woman receiving Aid to Families with Dependent Children ("AFDC") public assistance, 42 U.S.C. §§ 601 *et seq.* and medical assistance under the "Medicaid" program. 42 U.S.C. § 1396 *et seq.*

2. Jane Doe wishes to have an abortion. She is 38 years old and has had nine previous pregnancies, two of which resulted in miscarriages. She has a history of thrombophlebitis, a medical condition which, in her case, has been associated with varicose veins. In the opinion of her physician there is, if she continues her pregnancy, a significant medical risk (about 30%) of deep vein thombophlebitis, a medical condition which would impair her circulation and require prolonged hospitalization,

bedrest and surgery. He is also of the opinion that if she continued veins will recur. In her physician's judgment, an abortion is medically necessary for her, though not necessary to preserve her life. See affidavit attached hereto.

3. Because of her indigency, Jane Doe is unable to secure a safe and legal abortion unless such an abortion is funded under an Illinois medical assistance program, including Medicaid.

4. P.A. 80-1091, the legality of which plaintiffs have challenged here, denies reimbursement, *inter alia,* for the medically necessary abortion Jane Doe requires.

5. Defendant is now enforcing or will, imminently enforce, P.A. 80-1091 to deny funding for the medically necessary abortion Jane Doe requires. She is therefore unable to secure such an abortion and is therefore suffering, or is imminently threatened with suffering, financial injury and injury to her physical and mental health.

6. For the reasons stated in paragraphs 1-5:

(a) Jane Doe asserts a right to relief against defendant jointly with plaintiffs. This right to relief included declaratory and injunctive relief against enforcement of P.A. 80-1091, in that it violates her rights and the rights of all similarly situated women under the Social Security Act and the Ninth and Fourteenth amendments to the United States Constitution.

(b) This right to relief arises out of the same occurrences as plaintiffs' right to relief, specifically, defendant's actual or threatened enforcement of P.A. 80-1091.

(c) The joinder of Jane Doe as a party plaintiff to this action presents predominant questions of law and fact in common with those presently before the Court.

7. Jane Doe wishes to be a party in this cause; to safeguard her privacy interest in her decision to secure an abortion, she wishes to proceed under the pseudonym "Jane Doe." A woman's right to proceed under a pseudonym in litigation involving her right to an abortion is well-established, and will not



prejudice defendant. *Roe* v. *Wade,* 410 U.S. 113 (1973), *Doe* v. *Bolton,* 410 U.S. 179 (1973), *Wynn* v. *Scott I,* 78 C 237 (N.D. Ill.), *Wynn* v. *Scott II,* 75 C 3975 (N.D. Ill.)

8. F.R.C.P. 15 requires that leave to file the amended and supplemental pleading attached hereto should be freely given "when justice so requires." Here that standard is plainly met since Jane Doe meets all the requirements for joinder as a party plaintiff, and defendant would in no way be prejudiced by an order granting plaintiffs' motion in its entirety.

Respectfully submitted,

/s/ ROBERT E. LEHRER
One of the Attorneys for Plaintiffs

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STATE OF ILLINOIS
COUNTY OF COOK } ss.:

**AFFIDAVIT OF DAVID ZBARAZ, M.D.**

DAVID ZBARAZ, being duly sworn, states as follows:

1. I am a physician on the staff of Michael Reese Hospital, specializing in obstetrics and gynecology. I have reviewed the medical records of Jane Doe, a patient at Michael Reese who was recently examined by two other physicians on the staff of the hospital. The records disclose the following information:

Jane Doe is 38 years old and has had nine previous pregnancies. She has a history of varicose veins and thrombophlebitis (blood clots) of the left leg. The varicose veins can be, and in her case were, caused by multiple pregnancies: the weight of the uterus on her pelvic veins increased the blood pressure in the veins of her lower extremities; those veins dilated and her circulation was impaired, resulting in thrombophlebitis of her left leg. The varicosities of her lower extremities became so severe that they required partial surgical removal in 1973.

2. Given this medical history, Jane Doe's varicose veins are almost certain to recur if she continues her pregnancy. Such a recurrence would require a second operative procedure for their removal. Given her medical history, there is also about a 30% risk that her thrombophlebitis will recur during the pregnancy in the form of "deep vein" thrombophlebitis (the surface veins of her left leg having previously been partially removed). This condition would impair circulation and might require prolonged hospitalization with bed rest.

3. Considering Jane Doe's medical history of varicose veins and thrombophlebitis, particularly against the background of her age and multiple pregnancies, it is my view that an abortion is medically necessary for her, though not necessary to preserve her life.

/s/ DAVID ZBARAZ

SUBSCRIBED and SWORN to before me this 24th day of April, 1978

/s/ ELNOR B. GREENFIELD
Notary Public



**IN THE UNITED STATES DISTRICT COURT**
**FOR THE NORTHERN DISTRICT OF ILLINOIS**
**EASTERN DIVISION**

| | |
|---|---|
| **DAVID ZBARAZ, M.D., MARTIN MOTEW, M.D., on their own behalf and on behalf of all others similarly situated; JANE DOE, on behalf of herself and all others similarly situated, and the CHICAGO WELFARE RIGHTS ORGANIZATION, an Illinois not-for-profit corporation,** ***Plaintiffs,*** **vs. ARTHUR F. QUERN, Director of the Illinois Department of Public Aid,** ***Defendant.*** | No. 77 C 4522 |

**AMENDED AND SUPPLEMENTAL PLEADING**

**A.**

As supplemented by occurrences since the date of the complaint, ¶ 1, 16, 17 and 18 are amended, and new ¶ 5A, 5B and 6A are added, to read as follows:

1. This action is brought as a class action. Plaintiffs include two physicians who as part of their practice regularly provide medically necessary abortions to indigent women, and an indigent pregnant woman eligible for the Medical Assistance Program ("Medicaid"), and for whom an abortion is medically necessary. [Beginning with its second sentence, ¶ 1 is otherwise unchanged.]

5A. Jane Doe is a pseudonym for a 38 year old indigent pregnant woman receiving Aid to Families with Dependent

Children public assistance, 42 U.S.C. §§ 601 *et seq.* and aid under the Medical Assistance Program ("Medicaid"), 42 U.S.C. § 1396 *et seq.*

5B. Plaintiff Jane Doe (a) has had nine previous pregnancies, two of which resulted in miscarriages.

(b) has a history of thrombophlebitis, a medical condition which, in her case, has been associated with varicose veins. In the opinion of her physician, there is, if she continues her pregnancy, a significant medical risk (about 30%) of deep vein thrombophlebitis, a condition which would impair her circulation and require prolonged hospitalization and bedrest. If she continues her pregnancy there is also a near certainty that her varicose veins will recur; this condition will require surgery. In her physician's judgment an abortion is medically necessary for her, though not necessary to preserve her life.

(c) is an aggrieved woman patient within the meaning of ¶ 14.

6A. Plaintiff Jane Doe brings this action as a class action on her own behalf and on behalf of all other similarly situated, pursuant to F.R.C.P. 23(a) and (b)(2). The class is defined as all pregnant women eligible for the Illinois Medical Assistance Programs [Ill. Rev. Stat. ch. 23 Art. V-VII] for whom an abortion is medically necessary, but not necessary for the preservation of their lives, and who wish such abortions performed. The class is hereinafter referred to as the "pregnant women class." The class is so numerous (thousands of women enter the class each year) that joinder of all members is impracticable; there are questions of law and fact common to the class; the claims of the named plaintiff are typical of the claims of the class; and the named plaintiff will fairly and adequately protect the interests of the class. The defendant has acted and is acting on grounds generally applicable to the class, thereby making appropriate final injunctive and declaratory relief with respect to the class as a whole.



16. Defendant Quern is currently enforcing P.A. 80-1091, or will imminently enforce, P.A. 80-1091 to deny reimbursement under the Illinois medical assistance programs for all medically necessary abortions (a) to plaintiffs Motew and Zbaraz and all members of the physician class, (b) to hospitals and clinics; (c) to all other medical providers; and (d) with respect to plaintiff Doe and all members of the pregnant women class.

17. As long as Illinois reimbursed them for performing medically necessary abortions for indigent pregnant women, plaintiffs Motew and Zbaraz and members of the physician class offered and performed such medically necessary abortions for members of the pregnant woman class. They wish to continue providing such medically necessary abortions for members of the pregnant women class, and will continue to do so if defendant Quern ceases enforcing P.A. 80-1091 to deny reimbursement for medically necessary abortions.

18. For the indefinite future, a large number of indigent women patients of Plaintiffs Motew and Zbaraz and other members of the physician class, and Plaintiff Doe and all members of the pregnant women class, will require and were it not for P.A. 80-1091 would seek and obtain, medically necessary abortions. However, because of P.A. 80-1091 they are unable to obtain medically necessary abortions other than ones necessary to save their lives, with resultant danger to their health and well-being.

**B.**

Except with respect to paragraphs 5(a), 6, 7 and 20, all references in the Complaint to "aggrieved women patients" are hereby amended to read "Plaintiff Doe, all members of the pregnant women class, and aggrieved women patients." The paragraphs so amended include paragraphs 21, 22, 23 and 27, and paragraphs (A), (C) and (D) of the Prayer for Relief.

The reference in paragraph 20 to "some aggrieved women patients" is amended to read "some members of the pregnant women class and some aggrieved women patients."

C.

A Public Act Number for H.B. 333 has been designated since the date of the complaint, and all references to H.B. 333 are hereby amended to refer to P.A. 80-1091.

Respectfully submitted,

/s/ ROBERT E. LEHRER
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UNITED STATES DISTRICT COURT
IN THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DAVID ZBARAZ, M.D., et al.,
*Plaintiffs,*
v.
ARTHUR F. QUERN, etc.,
*Defendant.*
No. 77 C 4522

AFFIDAVIT

JASPER F. WILLIAMS, M.D., being duly sworn, states as follows:

1. I am a resident of Chicago, Illinois. If called as witness, I would testify to facts stated herein based upon my training and experience as an obstetrical-gynecological physician.

2. My curriculum vitae is attached to my Motion to Intervene. My practice largely consists of the treatment of pregnant women and their preborn children during the course of pregnancy and childbirth and the complications thereof. I have directly managed an average of 500 pregnancies per year in the 21 year course of my profession, or approximately 10,500. Approximately one half of my present practice is as a consultant: I am present Chairman of the Ob-Gyn Dept. at St. Bernard Hospital and co-Chairman of the Ob-Gyn Dept. at Jackson Park Hospital. I am reimbursed through medicaid for the care of 40% of my patients. My patients are and have been almost exclusively Black—96-98%. I have treated and treat the complications of legal abortion in approximately 50 women per year; one woman has died in my care as a result of legal abortion; I have been consultant in four additional cases where

patients have died as a result of legal abortion. In the course of my practice as a physician, two women have died in my care during pregnancy—one of sickle cell crisis; one from pulmonary embolus. Neither death necessarily related to pregnancy.

3. I have read the affidavit of Dr. Depp submitted in this case.

4. I am aware that the State of Illinois will reimburse providers under its medical assistance program for abortions "necessary to preserve life." The standard proposed, "necessary to preserve life," is clear to me in the practice of my profession. Although whatever the procedure or medication contemplated, the physician must obviously approach treatment in light of the possible risks that the patient faces through his condition and the contemplated treatment, by training and experience I fully am able to conclude with reasonable medical certainty in an individual case that some course of treatment is necessary to preserve life or, for that matter, health. Indeed, it is my experience that making such judgments is the very nature of medical practice.

5. I have not, either in my practice or as a member of the abortion committee of Illinois Masonic Hospital for several years before abortion was generally legal, confronted a situation where abortion was necessary to preserve maternal life in view of alternative methods of treatment available. Although in approximately 10% of my patients pregnancy creates or exacerbates a "health" problem, I have not confronted a situation where abortion was necessary to preserve maternal health in view of alternative methods of treatment available.

6. It is not my experience that where pregnancy is "unwanted" that the mother will be at greater risk during the course of pregnancy or childbirth. In my experience, the majority of pregnancies are initially "unwanted;" likewise, the attitude of the mother toward pregnancy changes and the child is later "wanted" in the majority of pregnancies. Indeed, when a woman is pregnant with an "unwanted child"—whether



initially or throughout pregnancy—it is, in my experience, more likely that she will seek medical care than the woman who desires or is indifferent to pregnancy. This is so because the woman with the "unwanted" child has increased anxieties and will wish to minimize the impact of pregnancy upon her ambitions or life situations. In any event, the desires or preferences of my patients cannot and do not determine diagnosis or recommended medical practice.

7. For each and every medical condition for which Dr. Depp indicates pregnancy creates or exacerbates a threat to maternal health or life, alternate medical treatments other than abortion exist for which the physician might be reimbursed through medicaid. The variant risks noted by Dr. Depp for different classes—the young, old and the poor—simply indicate that a professional judgment made with reasonable medical certainty will vary based upon the circumstances of the individual case and that higher quality medical care might be required in some cases.

/s/ JASPER E. WILLIAMS, M.D.
JASPER E. WILLIAMS, M.D.

SUBSCRIBED AND SWORN TO
before me this 26th day of April,
1978.

/s/ THOMAS J. MORGEN
Notary Public

Honorable Alfred Y. Kirkland
United States District Court
219 South Dearborn Street
Room 1946
Chicago, Illinois 60604

Re: Zbaraz, et al. v. Quern, et al.
USDC ED Ill., Civil No. 77-C-4522

Dear Judge Kirkland:

This is to advise you that the United States requests intervention in the above captioned case pursuant to 29 U.S.C. § 2403(a). We understand, through conversations with your law clerk, Mr. Jay Price, that you will not require formal papers for this intervention. Accordingly, please consider this as our formal intervention application.

It is also our understanding that a simultaneous briefing schedule has been established requiring the initial briefs by March 12, 1979. While we are mindful of the Seventh Circuit's request to expedite this case, in view of the fact that the government has not been a party to this extensive litigation, we would request a two week extension of time. This office has not yet received all the papers filed in the earlier proceedings and will need time, once they are received, to review them before preparing our own response.

The attorney primarily responsible for handling this matter is Ann F. Cohen, who may be reached at (202) 633-4686. She will contact Mr. Price to discuss our request for additional time.

Very truly yours,

BARBARA ALLEN BABCOCK
Assistant Attorney General
Civil Division

By: /s/ BARBARA B. O'MALLEY

BARBARA B. O'MALLEY
Director
Federal Programs Branch



**UNITED STATES DISTRICT COURT**
**FOR THE NORTHERN DISTRICT OF ILLINOIS**
**EASTERN DIVISION**

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| **DAVID ZBARAZ, M.D., MARTIN MOTEW, M.D., on their own behalf and on behalf of all others similarly situated; CHICAGO WELFARE RIGHTS ORGANIZATION, an Illinois not-for-profit corporation, and JANE DOE, on her own behalf and on behalf of all others similarly situated,** ***Plaintiffs,*** **v. ARTHUR F. QUERN, Director, Illinois Department of Public Aid,** ***Defendant,*** **JASPER F. WILLIAMS, M.D., AND EUGENE F. DIAMOND, M.D.,** ***Intervening Defendants.*** | No. 77 C 4522<br>Honorable **Alfred Y. Kirkland**<br>Judge Presiding |

## MOTION FOR SUMMARY JUDGMENT

NOW COME Intervening Defendants, Jasper F. Williams, M.D. and Eugene F. Diamond, M.D., and move this court to grant a Summary Judgment pursuant to F.R. Civ. P. 56, upholding under the United States Constitution Title XIX as amended by the "Hyde Amendment" to the HEW-Labor Appropriations Act of 1979 and P.A. 80-1091, ILL. REV. STAT. ch. 23, §§ 5-5, 6-1, 7-1 (1977 Supp.), since there is no dispute over facts essential to the outcome of this litigation. A Brief in support of this Motion has been filed with this court.

/s/ THOMAS J. MARZEN
Dennis J. Horan
Thomas J. Marzen
John D. Gorby
Patrick A. Trueman
Americans United for Life
Legal Defense Fund
230 N. Michigan #515, Chicago IL 60601
312/263-5386
Attorneys for Intervening Defendants,
Jasper F. Williams, M.D. and
Eugene F. Diamond, M.D.

**UNITED STATES DISTRICT COURT**
**FOR THE NORTHERN DISTRICT OF ILLINOIS**
**EASTERN DIVISION**

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| **DAVID ZBARAZ, M.D., et al.,** ***Plaintiffs,*** **vs.** **ARTHUR F. QUERN, etc., et al.,** ***Defendants.*** | No. 77 C 4522 |

## AFFIDAVIT OF OREN RICHARD DEPP, M.D.

OREN RICHARD DEPP, III, M.D., being duly sworn, states as follows:

1. I am a resident of Chicago, Illinois. If called as a witness, I would testify to the facts stated herein based on my personal knowledge and experience.

2. I am Director of the Division of Obstetrics and Chairman of the Perinatal (High-risk Pregnancy) Center at Prentice Women's Hospital and Maternity Center of Northwestern Memorial Hospital in Chicago, Illinois. I am also Associate Professor in the Department of Obstetrics and Gynecology ("ob/gyn") and Head of the Section of Maternal-Fetal Medicine at Northwestern University Medical School in Chicago. I am licensed to practice medicine in the states of Illinois, Pennsylvania, Washington and Louisiana. I am board certified in the specialty of ob/gyn, which is the area of medicine concerned with the reproductive care of women. In addition, I am board certified in maternal-fetal medicine, which is a sub-specialty of ob/gyn concerned with the care of high-risk pregnancies. There are approximately 120 board certified



physicians in the sub-specialty of maternal-fetal medicine in the United States. A complete description of my medical qualifications and publications is attached to the previous affidavit I submitted in this case, on December 12, 1977 ("Depp I Affidavit").

3. I have practiced medicine in my specialty and subspecialty since 1963. During the time I was Director of the Fetal-Maternal Intensive Care Unit at Magee Womens Hospital in Pittsburgh, Pennsylvania, I was primary consultant for some 30,000 patients; since I have been at Prentice Women's Hospital and Maternity Center, I have supervised the perinatal health care of some 6,000 patients. I have personally examined several thousand women patients, including women who have desired to terminate their pregnancies. Many of my patients are poor, and many receive medical assistance from the State of Illinois. I have examined, and presently examine, pregnant women to evaluate health risks of their pregnancies. As Director of the High Risk Pregnancy Center at Prentice, I supervise the delivery of special, intensive health care services for women with high-risk pregnancies, in order to minimize the risks to them of childbirth and to enable them to carry their pregnancies safely to term.

4. I have reviewed the "Physician's Application for Payment for Abortion" (attached hereto), which describes the three circumstances in which abortions will be funded under the Illinois medical assistance program. In my professional opinion, the first two circumstances ("life-endangerment" and "severe and long lasting physical health damage") do not articulate criteria which a physician can apply in conformity with accepted standards of medical practice.

5. First, by requiring a doctor to certify that a pregnant women's life *would have been* endangered or that severe and long lasting physical health damage *would have* resulted if the pregnancy were carried to term, the criteria require a certainty of prediction which is foreign to almost all medical judgments.

A physician's evaluation of a pregnant woman's medical condition and of the appropriate treatment of that condition cannot ordinarily be made in terms of certainty. Thus, with very rare exceptions—ectopic pregnancy, for example—specific medical conditions arising in or exacerbated by pregnancy cannot be predicted certainly to result in death or injury to the health of the pregnant woman. Individual patients can only be evaluated in terms of statistical risks and probabilities, based on the experience of a population of similar patients. Few such risks ever approach 100% certainty, though the particular risk which a specific medical condition poses and the nature of the injury presented by that risk may be very substantial from a physician's point of view. To take a common example, a pregnant woman with essential hypertension has a 20% risk of developing pre-eclampsia (toxemia), which presents (particularly for a woman over 35 with several children) a likelihood of seizures, pulmonary edema, heart failure, and renal shutdown.

6. Second, the requirement that the physician predict that the *life* of the pregnant woman would have been endangered, or that *severe and long lasting* physical health damage would have resulted to her, compounds the problem of requiring certainty of prediction. Physicians ordinarily cannot predict the quantity or degree of injury which may result from a particular medical condition. Health and disease exist along a continuum; that a patient will sustain precisely small or great injury to her health can rarely be ascertained beforehand. Thus, even if a doctor were to assume that a particular hypertensive patient will definitely develop pre-eclampsia (which, given the 20% risk factor, he obviously cannot do), he is still unable to predict the duration of severity of that medical problem.

7. Third, medical treatment seeks to avoid risks to "health." The terms "life . . . endangered," "severe," and "long lasting" are not terms which physicians ordinarily use in evaluating medical risks. Their meaning is, therefore, uncertain and open to a variety of interpretation. It is uncertain, for



example, whether "life-endangerment" means that childbirth must result in death or in a shortening of the woman's life. It is uncertain how "severe" and how "long lasting" a health condition must be in order for the woman to be certified for an IDPA-reimbursed abortion.

8. Fourth, even under a broad interpretation of their meaning, the criteria articulated in the Physician's Application would, in many instances, prevent a physician from certifying a patient for an IDPA-reimbursed abortion during the early stages of pregnancy when an abortion is far safer than one performed later. *See* Depp I Affidavit, ¶ 5. This is because the vast majority of medical problems associated with pregnancy appear during the early stages of pregnancy as uncertain health risks and do not reach the level of life-threatening or severe and long lasting health problems until later. This is particularly true of heart disease, where the likelihood of severe risk is not usually apparent until after the 28th week of pregnancy. It is also true for the leading causes of maternal mortality, hemorrhage and toxemia, *see* Depp I affidavit, ¶ s 12, 13, which are ordinarily not predictable at all during the early stages of pregnancy. Thus, the conditions giving rise to toxemia and hemorrhage appear as uncertain, though definite, health risks during the early stages of pregnancy, and the possible consequences—hemorrhage or toxemia—do not become apparent until late in the pregnancy, when abortion is much riskier.

9. For women with serious health problems, delay in obtaining abortion may have even more serious consequences that it has for healthy women. The chance of incurring complications for both groups is the same, but the *consequences* of such complications are far more dangerous for a woman with a serious health problem. For example, a woman with a valvular heart disease has no greater chance of incurring infection from a late abortion than does a healthy woman, but if the former woman *does* incur infection, the con-

sequences—further destruction of her valves—are likely to be far more deleterious than in a healthy woman who incurs infection as the result of a late abortion.

10. In some instances, a physician may, by means of tests, predict with more certainty the risk a particular medical condition poses to a particular patient during the early stages of pregnancy. These tests, however, pose their own risks to the health of a patient. Thus, a woman with a history of liver disease has a medically significant risk in pregnancy. How substantial the risk is, however, cannot be known during the first trimester unless a liver biopsy is performed. But a liver biopsy has the inherent risk of hemorrhage or infection which in itself may be life-threatening.

11. What competent physicians can safely determine during the early stages of pregnancy is that a particular patient, evaluated on an individual basis, has a certain health profile which creates a higher than normal risk of adverse consequences to her health if her pregnancy is carried to term. (Exhaustive descriptions of all the medical conditions posing a risk to the health or life of the pregnant woman would require volumes of descriptions. The Depp I Affidavit (at ¶¶10-12, 14) describes some of these conditions.) A physician's evaluation of what risk of morbidity or mortality is excessive depends upon his evaluation of that risk to the particular patient as compared with the risk to the normal population. The current maternal mortality rate in the United States is 2/10,000, or 2/100 of 1%. Pritchard & MacDonald, eds., *Obstetrics* (15th ed. 1976). In my professional opinion, a 1% or higher risk of mortality is excessive or medically significant, since it represents a 50-fold increased risk of mortality over that to which the normal population is subject. Moreover, a 50-fold increased risk of mortality means an even higher risk of morbidity, because not all patients with significant risk of mortality die. The multiple of risk is probably on the order of four to ten (that is, a group with a pregnancy mortality rate of 1% would tend to have a



morbidity rate of 4% to 10%). Where a 1% or higher risk of morbidity or mortality exists together with a firm wish by the patient to terminate her pregnancy, I would consider an abortion to be medically indicated (or "medically necessary" or "therapeutic"). Given my threshold of intervention, I would estimate that somewhat fewer than 50% of women desiring abortions have a medical need for one. Some doctors, of course, have higher thresholds of intervention than I do and some have lower ones, but the percentage of abortions any physician would deem "medically necessary" is likely to fall between 20% and 50% of representative cases in which the pregnant woman wants an abortion.

12. That abortions are safer than childbirth in the first trimester does not make any abortion desired by a woman medically necessary. A woman with a normal pregnancy is not considered to be at risk, and the fact that she experiences health problems associated with a normal pregnancy (such as nausea, water retention, sleeplessness, lower back problems, contracting of organs, to name a few) does not make an abortion medically necessary. A pregnant patient's risk is viewed in relation to that of the normal pregnant population. Thus, for a woman to be at risk in pregnancy, the condition creating the risk is that not of normal pregnancy, but of abnormal health problems associated with or exacerbated by pregnancy. A decision that an abortion is medically indicated is made not because a woman does not want to remain pregnant but because she does not want to subject herself to the abnormal risk associated with her pregnancy.

13. Certain population groups are at higher risk in pregnancy than is the normal population. Depp I Affidavit, ¶s 15-17. This does not mean that membership in such a high risk group plus desire to terminate the pregnancy alone would be sufficient for an abortion to be considered medically necessary. For example, poor women are a high risk group. They are more likely to be poorly nourished and under serious stress and

are less likely to utilize, or have access to, adequate health care facilities. For those reasons, among others, a poor woman is more likely than a woman who is not poor to suffer from rheumatic heart disease and essential hypertension—conditions which pose serious risk to the woman's health in pregnancy. But before I could conclude that a poor woman has a medical need for an abortion, I would have to examine her to determine if she suffers from any of these conditions. Adolescent women comprise another high risk group, but before I could conclude that an abortion was medically necessary for a particular adolescent, I would have to examine her for those conditions which create the high risk associated with adolescence—for example, the size of her pelvis, the extent of her growth, and her eating habits. Likewise, in the case of a woman over 35, I would look, among other things, for signs of hypertension and gestational diabetes (abnormal glucose metabolism).

14. There is often more than one choice of treatment for a pregnant woman whose condition is such that she has a medical need for an abortion. But often abortion is the medically preferred choice. A patient who is forced to carry her pregnancy to term may be unwilling or unable to cooperate with special treatment to ameliorate the risks—such as giving up employment, obtaining extensive bed rest, making frequent hospital visits or obtaining outside help to take care of familial responsibilities. Moreover, alternative treatment is often more dangerous than abortion. For example, certain drugs such as apresoline or phenobarbitol may alleviate the effects of hypertension, but we simply do not know whether these drugs create other risks dangerous to maternal or fetal health. Diethylstilbestrol (DES) was commonly administered in the 1950's for certain groups of pregnant women at high risk in pregnancy. Only in the mid 1970's was it determined that DES in fact created a substantial risk of pre-malignant vaginal lesions among the daughters born of women who were administered this drug. Any drug has the possibility of adverse, if



sometimes remote, consequences, and before it may be administered, the woman would have to be willing to subject herself and her fetus to the associated risks.

15. The Physician's Application for Payment of Abortion does not comprehend the variety of factors, the uncertainties and the complexities inherent in medical judgments. It sets forth criteria which are foreign to accepted standards of medical practice. Its language appears to require physicians to make absolute judgments which they have been taught they cannot make and which they are unable to make confidently. In addition, doctors are aware that these criteria have been established with the intent of restricting abortion for moral or religious, rather than for medical, reasons. The restrictive intent is evidenced by the fact that a doctor must sign an elaborate certification form for abortion, but not for any other medical procedure covered by the Illinois medical assistance programs, and by the fact that *two* doctors must certify to severe and long lasting physical health damage, while no other procedures covered by the Illinois medical assistance programs require approval of two doctors. For these reasons, and because a physician would want to implement honestly any legal restriction imposed upon him, I and, I believe, virtually all of my professional colleagues would be most reluctant to certify patients for medical assistance abortions under the criteria set forth in the Physician's Application.

16. Because the criteria set forth in the Physician's Application do not permit doctors to certify abortions based on an abnormally high degree (in my opinion, a 1% or higher risk of mortality) of health risks, I consider them medically unethical. The criteria limit a doctor's choice of medically necessary treatment for non-medical reasons. In practice, they require a doctor to withhold medically necessary treatment to the point of certainty of death or serious consequences to health. In so doing, they conflict with the fundamental goal of medical

practice, which is to prevent morbidity and mortality by helping a patient choose treatment which has the least combined risk of morbidity and mortality.

17. Most health problems associated with pregnancy, for which I would consider an abortion to be medically necessary, would not, in my opinion, come within the scope of the new Illinois criteria. For example, a woman with sickle cell trait has a small, but far higher than normal, risk of injury to her health if her pregnancy is carried to term. Risks include acute pyelonephritis (kidney malfunction), premature labor, anemia and hemorrhage. Malnutrition is another example of a condition that, associated with pregnancy, creates a much higher than normal risk of health injury: toxemia, infection, premature labor, anemia, and a likelihood that delivery will be by cesarean section (which, in turn, poses a 26-fold increased risk of mortality over vaginal delivery). For both sickle cell trait and malnutrition, however, the risks of these types of injuries are less than certain—far less than 50%—and I could not certify a woman with either of these conditions under the Illinois criteria.

Essential hypertension is a medical condition more common in black, poor women than in the general population. This condition presents a significant risk of poor fetal growth, preeclampsia, eclamptic seizures, hemorrhage, aspiration pneumonia, delivery by cesarean section and anesthetic complication. The risk of these injuries occurring to a particular hypertensive individual, however, while medically significant, is uncertain. A woman with a history of thrombophlebitis has an increased risk of its recurrence in pregnancy, with a subsequent excessive risk of pulmonary embolus and death. But the consequences are substantially less than certain to occur, and I could not certify such women under the Illinois criteria.

Many conditions can be exacerbated by pregnancy so as to result in "severe" and "long lasting" physical health damage (under some definition of those terms). But the uncertainty of



predicting their outcome for particular women renders it impossible to certify women with these conditions for abortion under the Illinois criteria. For example, a woman exhibiting slight retinal eye damage resulting from diabetes is at risk in pregnancy. Pregnancy may exacerbate the condition to the point of death (the eye damage reflects a vascular condition which could affect other organs), it may cause permanent blindness, it may cause temporary blindness—which may, however, recur when the woman is older—or it may have no ill effects on the woman's eyesight. The physician's problem is reconciling such a condition with the new Illinois criteria is that there is simply no way of knowing ahead of time which, if any, effect a particular woman will suffer. Another example is a woman with sub-clinical kidney disease (pyelonephritis), a chronic, smoldering condition which is not detected until the reserve kidney function is used up. Pregnancy will cause such a condition to flare up with the possibility of serious consequences, including severe infection, septic shock, and loss of kidney. But the severity of the consequences cannot be known ahead of time. I would, accordingly, not feel that I could certify a woman with either of such conditions for a "life-endangering" or "severe and long lasting" abortion under the Illinois criteria.

18. In my professional opinion, the effect of the new Illinois criteria for abortion coverage under the medical assistance programs will be to increase substantially maternal morbidity and mortality among indigent pregnant women. First, given the uncertainty of prediction in terms of both likelihood and quantity of risk, doctors will be unable to certify most patients under the new Illinois criteria. But this does not, of course, change the fact of death or injury to a woman's health if an abortion is not performed. Thus, if only five women out of 100 suffering from a particular health condition will die, but a doctor cannot tell beforehand which five, he will be unable to certify any of these women for an abortion, and five will die. Moreover, if women with non-quantifiable health risks are forced to carry their pregnancies to term, the number of births

by cesarean section will at least double. Cesarean section for a healthy woman increases the risk of mortality 26-fold. For an unhealthy woman, the risk of mortality from cesarean section is higher.

Second, the inability to certify women with uncertain health risks will result in an increase in emergency terminations of pregnancy after the 28th week of pregnancy, when many conditions suddenly flare up and in fact become life-threatening. Such later terminations not only increase the risks of morbidity and mortality to the woman, but are likely to result in permanent neurological and developmental damage to the child who survives. (Terminations performed after viability are, of course, done with the object of creating a live child.)

Third, by its own terms, the Illinois criteria are *intended* to preclude coverage of most medically necessary abortions. They thereby assume the risk—and the certainty—that the failure to perform such abortion will result in health damage to many pregnant women.

/s/ OREN RICHARD DEPP, III
Oren Richard Depp, III

SUBSCRIBED AND SWORN to
before me this 21st day of
March, 1979.

/s/ ELNOR E. GREENFIELD
Notary Public



**UNITED STATES DISTRICT COURT**
**FOR THE NORTHERN DISTRICT OF ILLINOIS**
**EASTERN DIVISION**

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| **DAVID ZBARAZ, M.D., et al.,** ***Plaintiffs,*** **vs.** **ARTHUR F. QUERN, etc., et al.,** ***Defendants.*** | No. 77 C 4522 |

## AFFIDAVIT OF PETER BARGLOW, M.D.

PETER BARGLOW, M.D., being duly sworn, states as follows:

1. I am a resident of Chicago, Illinois. If called as a witness, I would testify to the facts stated herein based on my personal knowledge and experience and on the medical literature and statistical data which are cited herein and which are recognized in the medical profession as reliable.

2. I am licensed to practice medicine in the state of Illinois and am board certified in the specialty of psychoanalysis. I am on the medical staffs of Northwestern Memorial Hospital in Chicago, where I am an associate attending physician in the Department of Psychiatry, and Michael Reese Hospital, where I am an attending physician in the Departments of Psychiatry and Obstetrics/Gynecology ("ob/gyn"). I am also on the faculty of Northwestern University Medical School as Head of the Section of Psychosomatic Medicine, associate director of graduate training in the Department of Psychiatry, and associate professor in the Departments of Psychiatry and Ob/gyn. In addition I am a faculty member of the Chicago Institute for Psychoanalysis. My sub-specialty in the field of psychiatry is

the psychiatric aspects of obstetrics and gynecology. I believe I am the only psychiatrist in the United States who has an academic appointment in a department of ob/gyn.

3. I have practiced medicine in my specialty since 1960. From 1964 to 1970 I was associated with the Crittendon Comprehensive Care Center, an outpatient facility for indigent, pregnant adolescents. I helped establish the Center's program and was involved in treatment, research, evaluation and consultation at the Center. Prior to the legalization of abortion, I was frequently called upon to evaluate pregnant women to determine if they were likely to commit suicide and could thus qualify for abortions necessary to save their lives—the only abortions legally permitted in Illinois prior to 1973. (This was prior to the Illinois Supreme Court's 1972 ruling that suicide did not come within the scope of coverage of "life-saving" abortions.) I have treated or evaluated over 1,000 women for problems associated with pregnancy. I have had extensive experience treating pregnant adolescents, women desiring abortions, and women with ambivalent feelings about abortion. I have had substantial experience treating victims of rape and incest, as well as treating women who had previously sought and obtained illegal abortions prior to 1973. As a member of the staffs of Northwestern Memorial and Michael Reese Hospitals, I have treated many low income patients. A partial list of my publications, some of which deal specifically with abortion, is attached to this affidavit.

4. In psychiatry, as in other areas of medicine, there is no certainty of prediction. A psychiatrist's evaluation of a woman's mental health, and of appropriate treatment to maintain or improve her health, cannot ordinarily be made in terms of certainty. It is undeniable, however, that requiring a woman to carry an unwanted pregnancy to term may have adverse mental health consequences for her. Unwanted pregnancy can precipitate mental illness and can cause further psychiatric deterioration in women already suffering from mental illness or



prevent improvement in their conditions. A woman forced to carry a pregnancy to term may become severely depressed or psychotic, may suffer impairment or paralysis of functioning, and may engage in such self-destructive behavior as self-starvation, self-inflicted injury (including self-inflicted or otherwise illegal abortion), and suicide. These pathologic reactions create risks of additional adverse consequences to the pregnant woman. Self-starvation, for example, creates a risk of toxemia, premature labor and delivery by cesarean section, which presents a substantially increased risk of mortality.

5. Although prediction is necessarily uncertain with respect to the future course of mental illness, a psychiatrist can evaluate the risks pregnancy poses to a particular woman by looking for signs and symptoms which have been associated with adverse consequences in other women. These signs and symptoms include evidence of losing touch with reality (*e.g.*, delusions, hallucinations), non-sequential speech, flattening of affect (inappropriate lack of facial expression), withdrawal from loved ones, inordinate guilt over the woman's inability to manage a child, abuse of existing children, severe emotional reaction to prior pregnancies or to the present pregnancy (crying, desperation, threats of self-injury or of injury to others, being overwhelmed, hopelessness), previous history of postpartum psychosis or of psychiatric hospitalization, lack of social supports (*e.g.*, a woman who lives alone, has no family, and is totally dependent on her livelihood), preexisting mental illness, and manic (hyperactive, frantic) activity. Predictions about mental illness are somewhat more difficult to make than predictions about physical illness because the symptoms of mental illness are not as quantifiable as those of physical illness. While the symptoms themselves may be objectively observed, the subjective judgment of the psychiatrist about what those symptoms mean for an individual is necessarily less certain.

6. The goals of any psychiatric intervention are to protect the patient, to create an environment in which recovery can take place, and to restore the patient to competence in familial,

social and occupational functions. Where some or all of the signs and symptoms of risk described in ¶ 5, which threaten those goals, coexist with a firm wish by the patient to terminate her pregnancy, abortion is an appropriate form of psychiatric intervention. Abortion under these circumstances is "medically necessary" or "therapeutic." This standard for intervention is the usual standard of psychiatric evaluation.

7. Based on the criteria described above, I would estimate that approximately 15% of a representative group of women desiring abortions have a psychiatric need for an abortion. I do not, in other words, consider abortion to be medically indicated for psychiatric reasons merely because the woman desires it and is likely to "feel better" as the result of it. A woman's choice and her attitude toward her pregnancy, on the other hand, are key to the evaluation of medical necessity when combined with particular mental health profiles. A woman with an unwanted pregnancy who is psychologically depressed or who is emotionally volatile, for example, fares far worse than a woman with the same problems who wishes to carry her pregnancy to term. She is likely to be psychologically unable to make contact with medical providers and to be neglectful of her medical condition, with the result that many such women suffer serious injury to their physical as well as mental health. *See* Erickson, "The Influence of Health Factors on Psychological Variables Predicting Complications of Pregnancy, Labor and Delivery," 20 *Journal of Psychosomatic Research* 21 (1976); Davids, DeVault & Talmadge, "Anxiety, Pregnancy, and Childbirth Abnormalities," 25 *Journal of Consulting Psychology* 74 (1961).

8. For a woman whose mental health is threatened by her pregnancy, and who wishes to terminate that pregnancy, abortion is not considered a radical form of intervention from a psychiatric point of view. Balancing the risks and benefits, the overwhelming weight of evidence from the psychiatric and obstetrical literature proves that women generally do very well emotionally following abortion. Certainly for such women,



there are fewer emotional problems from abortion than from childbirth. *See, e.g.*, Brewer, "Incidence of Post-Abortion Psychosis: A Prospective Study," 32 *Obstetrical and Gynecological Survey* 600 (September, 1977); Patt, Rappaport, & Barglow, "Follow-Up of Therapeutic Abortion," 20 *Archives of General Psychiatry* 408 (April 1969); Eklund, "Induced Abortion on Psychiatric Grounds—a Follow-up Study of 479 Women," 30 *Acta Psychiatrica et Neurologica Scandinavica Supplement* 99 (1955).

9. While forms of intervention other than abortion usually exist, they are likely to be more radical, less effective, and thus less medically desirable than abortion. For example, institutionalization and forced feeding may avoid risks of suicide or self-starvation, but they may create a high risk to the particular woman of further deterioration by taking her out of her normal environment, forcing on her a sense of powerlessness, and depriving her of the ability to control her life. Psychotherapy, as an alternative form of intervention, is only effective if the woman is willing and able to cooperate. A woman with a firm wish to terminate her pregnancy is unlikely to cooperate with such alternative treatment. Drug therapy, an often effective form of intervention, can have deleterious effects on the fetus, while stopping such therapy may endanger the woman's mental health. Neither alternative would be desirable.

10. Statistically, poor women are more likely than are non-poor women to suffer adverse mental health consequences from unwanted pregnancy. There is a higher incidence of depressive illness and a higher rate of hospitalization for mental illness among the poor. Poverty adds to the seriousness of mental illness because the poor have far less effective social, familial and economic supports to help mitigate the severity of mental illness. Because they are more likely to be under stress, and to have a sense of powerlessness, they are less able to mobilize themselves to cope with their problems. The poor have less

access to medical facilities and are less likely to seek out medical care, particularly psychiatric care, until they suffer acute need. Thus a poor woman with an unwanted pregnancy is likely to fare far worse than a non-poor woman: she is less able to get either the mental health treatment or prenatal care that she needs, she may have to give up needed employment and thereby be without financial resources to care for herself, her child, and other existing children, and she is less able to find alternative solutions to deal with the problem of unwanted pregnancy as well as with her pre-existing psychiatric problems. I would estimate that approximately 25% of a group of low-income pregnant women would, after examination, be judged to have a psychiatric need for abortion.

11. Adolescent women comprise another "high risk" pregnancy group from a psychiatric point of view. Characteristics of adolescence—developmental immaturity, poorly developed capacity for impulse control, inability to assume responsibility for their own, let alone others' lives, and self-preoccupation—render most adolescent girls maturationally ill-equipped to cope with motherhood. Unwanted motherhood affects an adolescent more profoundly than any other event in her life. These girls tend to drop out of school and to remain uneducated, with minimal realization of their personal potential, arrested emotional and social development, and severe financial dependence. In studies of adolescents denied abortions, it was found that many demonstrated pathologic reactions, including frequent punitive hate reactions against the child and major social difficulties connected with care or placement of the child. *See* Levene & Rigney, "Law, Preventive Psychiatry and Therapeutic Abortion," 151 *Journal of Nervous and Mental Disease* 51 (1970); Hook, "Refused Abortion," 168 *Acta Psychiatrica Scandinavica Supplement* 1 (1963). I would estimate that approximately 35% of a group of low income, pregnant adolescents would, after examination, be judged to have a psychiatric need for an abortion.



12. I have read the Physician's Application for Payment for Abortion (attached hereto). With the possible exceptions of suicide and self-inflicted injury that results in severe and long lasting physical health damage, none of the psychiatric conditions that I have described in this Affidavit would come within the scope of coverage of the Physician's Application. (The likelihood of physical health damage resulting from the possibility of neglect in obtaining needed health care (see ¶ 7) is too remote and uncertain in individual cases to enable such women to be covered under these standards.) I believe that the scope of abortion coverage set forth in the Physician's Application is therefore unreasonable. It excludes a psychiatrically appropriate, safe form of medical intervention. It subjects poor women to risks of severe, possibly permanent mental health impairment. It interferes with a doctor's ability to help patients, and it does so for non-medical reasons.

13. Even if the Physician's Application is meant to cover women likely to commit suicide or to inflict severe and long lasting physical health damage on themselves, it articulates criteria that are foreign to standards of evaluation and prognosis in the practice of psychiatry. As I have stated (¶ 6), psychiatry looks to protecting the health and functioning capacity of patients, and psychiatric intervention is not withheld to the point of certainty or even likelihood of suicide or self-inflicted serious physical injury. Because doctors do not usually make these types of evaluations, I believe that the criteria will be open to varying interpretations and thresholds of intervention.

14. The criteria set forth in the Physician's Application are also ambiguous in that it is not at all clear that they in fact include suicide and self-inflicted injury within the scope of coverage. This ambiguity will also result in varying interpretations by doctors. On the whole, however, I believe that most doctors will be reluctant to certify "suicidal" patients under these standards. I do not believe—and I think most of

my colleagues would agree—that the criteria are meant to cover suicide or self-inflicted injury. First, I am aware that the intent of the new abortion funding criteria is a restrictive one and, therefore, probably contemplates only physical, or "involuntary" risks of life endangerment or physical health damage. Second, the previous Illinois standards for "therapeutic" abortion coverage, prior to the legalization of abortion, were held *not* to include the likelihood of suicide (*People ex rel. Hanrahan* v. *White,* 52 Ill. 2d 70, 285 N.E. 2d 129 (1972)), and I presume that the intent behind similarly conceived restrictions remains the same. Third, the Physician's Application requires that the certifying physician be the one who performs the abortion. Since such physicians are not ordinarily trained to make evaluations of psychiatric behavior, I would assume that prognosis of suicide or self-inflicted injury is not meant to be covered.

15. Even assuming, however, that suicide and self-inflicted injury were certifiable under the criteria set forth in the Physician's Application (and leaving aside the problem of who the certifying physician must be), I and, I believe, many of my colleagues, would find it almost impossible to certify patients under these criteria, in view of the lack of certainty in predicting the future course of mental illness (see ¶ s 4, 5). Prior to 1973, I had extensive experience in evaluating patients for "therapeutic" abortion to certify the likelihood of their committing suicide (see ¶ 3). After nine years of seeing such patients, I came to the conclusion that, though a small number of patients threatening suicide do in fact carry out their threats if denied abortion, I was unable in all but a tiny fraction of cases (less than 1%) to predict which ones would commit suicide. I would, moreover, be unable to certify even the tiny fraction of "likely" cases (women with a history of suicide attempts and with frank psychoses—*i.e.,* exhibiting such overt symptoms as delusions, hallucinations, flattening of affect and disorientation) under the criteria in the Physician's Application because of the certainty



those criteria require (that the woman's life *would* have been endangered; that severe and long lasting physical health damage *would* have resulted). Predictability of human behavior—whether it be of suicide or self-inflicted injury—is simply never that certain.

16. Predictability in psychiatry is more certain (though never approaching 100%) in the later stages of pregnancy than in the earlier stages. A doctor has more time to monitor and evaluate a patient as the pregnancy progresses, and a suicidal patient is more likely to make overt suicidal gestures as the pregnancy progresses. But as the pregnancy progresses abortion becomes less safe, and for a psychotic patient, more traumatic. Thus by the time a doctor can reasonably predict even the likelihood of suicide, the time for a safe abortion may have passed.

17. In my professional opinion, many women —particularly young women—who are victims of rape or incest will not be eligible for abortion coverage under the new Illinois criteria because of the 60-day reporting requirement. It has been my experience that many—perhaps most—such women refuse altogether to report the incident because of fear of retaliation, shame, humiliation, exposure, and parental disapproval or anger. For those willing to make the necessary reports in order to obtain abortions, 60 days is not enough time to acknowledge pregnancy. Menstrual irregularity and mis-

information about menstruation preclude many adolescents from being aware within a 60-day period that they may be pregnant. This genuine lack of awareness is compounded by a subconscious defensive denial that pregnancy may have resulted from a traumatic event which most victims wish to forget. In my experience, few adolescent rape and incest victims acknowledge the possibility of pregnancy until at least three or four months have elapsed.

/s/ PETER BARGLOW
Peter Barglow

SUBSCRIBED AND SWORN to
before me this 21st day of
March, 1979.

/s/ ELNOR B. GREENFIELD
Notary Public



**UNITED STATES DISTRICT COURT**
**FOR THE NORTHERN DISTRICT OF ILLINOIS**
**EASTERN DIVISION**

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| **DAVID ZBARAZ, M.D., et al.,** ***Plaintiffs,*** **vs.** **ARTHUR F. QUERN, etc., et al.,** ***Defendants.*** | No. 77 C 4522 |

**AFFIDAVIT OF DAVID ZBARAZ, M.D.**

DAVID ZBARAZ, M.D., being first duly sworn, states as follows:

1. I am a resident of Cook County, Illinois. If called as a witness, I would testify to the facts stated herein based on my personal knowledge and experience.

2. I am a Clinical Associate Professor at the University of Chicago Medical School, Department of Obstetrics-Gynecology. I am also an attending physician at Michael Reese Hospital. I am licensed to practice medicine in the State of Illinois, and am board-certified in the specialty of obstetrics-gynecology, the area of medicine concerned with the care of women, as it affects their reproductive capacity. In order to be board-certified, a physician must pass oral and written examinations after practicing a specified number of years in the specialty (four years of post graduate study plus two years of specialized practice for obstetrics-gynecology).

3. I have practiced medicine in my specialty since 1966. From 1970 to 1975, I was Director of the Mandel Clinic, an obstetrical-gynecological ambulatory care facility at Michael Reese Hospital; I continue to see Clinic patients regularly as part of my duties as attending physician at Michael Reese. The Clinic serves primarily indigent women, most of whom receive medical assistance from the State of Illinois. I have personally examined several thousand women at the Clinic, and have supervised the care of several thousand more. I also have a private practice, serving primarily middle- and upper-income women, none of whom receive medical assistance from the State of Illinois.

4. I have reviewed a document entitled "Physician's Application for Payment for Abortion" (attached hereto) which specifies the conditions under which the State of Illinois will pay for abortions under the Illinois medical assistance programs. The application states that payment for abortion is made in only three situations: (1) when a physician can "determine . . . on the basis of . . . [his] professional judgment that the life of the mother would have been endangered if the fetus were carried to term"; (2) where a physician can "determine . . . on the basis of [his] professional judgment that severe and long lasting physical health damage to the mother would have resulted if the pregnancy were carried to term"; (3) in limited instances of rape and incest.

5. I have evaluated the first two descriptions of when Illinois will cover abortions under its medical assistance programs, in terms of whether, given the current state of medical knowledge, they contain criteria which a physician can apply in conformity with accepted standards of medical practice. In my professional opinion, they do not contain such criteria; to the contrary, they articulate criteria antithetical to accepted standards of medical practice, and, in fact, require a physician who wishes to perform only authorized abortions to commit what —in the absence of financial considerations—generally would be considered malpractice.



6. The application states that for an abortion to be covered, a physician must certify that in his professional judgment, a woman's life "*would have been* endangered," or that "severe and long lasting physical health damage . . . *would have resulted,*" without an abortion (emphasis added). I read these standards to require a physician to predict, with certainty, both that specific medical conditions or illness will result in some injury to a pregnant woman, and the severity and duration of the injury. But except in rare situations, such as ectopic pregnancies, certainty with respect to either the fact of injury at all, its severity, or its duration, is simply not possible.

(a) Women suffering from any number of specific health conditions or illness prior to pregnancy face a statistically significant risk of mortality or morbidity from pregnancy and childbirth. For example, pregnant women with hypertension experience a significantly increased risk of stroke (and possible resultant brain damage), premature delivery and fetal death, over that of the normal population. If the hypertension is exacerbated by pregnancy, they have an increased risk of eventually suffering organ damage. Yet , with respect to any individual woman patient, it is impossible to predict that she will definitely suffer any of these medical problems, or the severity or duration of these medical problems if they do occur. Women who are obese, or anemic, or who have a history of heart disease, are other examples of high risk groups with increased rates of morbidity and mortality from pregnancy. A physician is similarly unable to predict with certainty that an individual woman in these groups will suffer health damage from pregnancy, or that the damage will be "severe" or "long lasting."

(b) The same uncertainty about a physician's predictions exists with respect to conditions which have their onset during pregnancy. For example, uterine fibroid (non-malignant) tumors may have their onset during pregnancy, or their growth may be spurred by pregnancy. If the tumor grows—which it

may not do until the second trimester—the woman faces an increased risk of spontaneous abortion, various complications in labor, and hemorrhage during and after pregnancy. That the population of women with such tumors is at increased risk, however, does not mean that all women will suffer these consequences; on the contrary, it means that some women will not. Thus, growth of the tumor for some women involves merely swelling, without associated discomfort, and which subsides after pregnancy. On the other hand, perhaps 10% of women with fibroid tumors experience such pain and bleeding that they eventually require surgery—either a myomectomy (to remove only the tumor) or a hysterectomy (to remove all the reproductive organs). The point is that it is impossible to predict, with any certainty, for any individual woman patient with a fibroid tumor, what consequences growth of that tumor will have for her. In other words, it is not possible to state with certainty, with respect to any individual woman with a fibroid tumor, that her life "would have been endangered" or that "severe and long lasting physical health damage" would have resulted to her, unless an abortion were performed.

(c) Pregnant adolescent girls, those under 17 years of age, have substantially greater rates of mortality and morbidity from pregnancy and childbirth than does the normal population. They are more likely to suffer from toxemia and pre-eclampsia, which present a risk of serious kidney damage, and are potentially fatal. Moreover, adolescents are more likely—because of having an underdeveloped pelvis—to require surgical intervention and caesarean section for delivery, with concomitant risk from the surgery of morbidity and mortality in that childbirth and any future childbirth (which necessarily also will be done by caesarean section). There are some adolescents, of course—those who are unusually physically mature, and otherwise well-nourished, healthy, and willing and able to follow a physician's instructions—for whom continuing pregnancy is not medically unwise. I have seen such patients at



Michael Reese, at the clinic for high-risk pregnant women. Many, however,—perhaps 10% of the rest—will encounter the serious complications I have described. Again, the point is there is no way a physician can know which of these adolescent patients will definitely suffer such complications, and thus no way to honestly certify that an abortion is eligible for reimbursement by the State of Illinois, until severe toxemia, for instance, actually occurs. This is because there are no studies demonstrating that for any age group—even those under 13—pregnancy is *always* life-endangering, or even life- or health-endangering for 51% of the population at risk (that is, one could not honestly certify that health damage even was "more likely than not" to occur). To wait for the actual onset of toxemia, however, in an adolescent at risk who wanted an abortion, would further endanger the patient, and would be improper medical care.

(d) Plaintiff Jane Doe presents another example of the impossibility of applying the Illinois standard. Plaintiff Doe was a grand multiparous (i.e. she had had multiple pregnancies) 38 year old woman with varicose veins. Continuation of her pregnancy presented a significant medical risk of increasing the varicosity, leading to increased swelling and pain. Had she actually developed a blood clot (venous thrombosis), which then caused pulmonary embolus, she could have died. Far more likely, however, was that the increased varicosity would have mandated surgery to strip (surgically remove) the veins and relieve the swelling and pain. In either case, however, it would be impossible to state that plaintiff Doe's life "would [have been] endangered" or that she "would have" had "severe and long lasting physical health damage" without an abortion. The present state of medical knowledge forecloses a physician from stating with certainty that pregnancy would have so exacerbated plaintiff's varicose veins as to cause her further health damage, much less from stating certainly the severity or duration of any injury she might incur. A physician

can state only that plaintiff Doe had a significantly increased risk (as compared with the normal pregnant population) of having complications endangering her health. An abortion for her was thus "medically indicated," or "medically necessary." (*See* ¶ *7(b) infra.*)

(e) The lack of certainty about predictions extends to even the most serious of potentially life-threatening conditions. For example, women with sickle cell disease have a 25% probability of going into sickle cell crisis and dying as a result of pregnancy. (The normal pregnancy mortality rate is 20 per 100,000.) Because of this extraordinarily high mortality rate, abortions for women with sickle cell disease are almost universally acknowledged to be "medically necessary." I would thus actively counsel such women to have abortions, unless they expressed a very strong desire to have the child. Yet it simply cannot be known, however careful her care and physician's monitoring, whether a particular patient will go into crisis, or whether the state of her disease will remain unaffected by pregnancy. It would not be proper medical care to wait for such an actual threat before terminating the pregnancy, if the patient did not want to incur the risk. Yet the Illinois standard, by requiring certainty about the outcome of a pregnancy, does not comprehend this inherent uncertainty in medical judgment prior to the onset of actual health crises.

In sum, as the above examples indicate, predictions about a pregnant woman's health condition only rarely can be made with certainty: for an individual woman patient, predictions about the fact of injury resulting from a medical condition, its severity, and duration can be expressed at best in terms of likelihood and probability, not of certainty. Individual patients can be, and are, evaluated only in terms of statistical risk, based on the experience of a population of similar patients, as compared with the norm; the risk almost never is 100%, though it may well be substantial from a medical perspective.



7. Although the Application requires that I predict with certainty "that severe and long lasting physical health damage" would have resulted to a pregnant woman, unless an abortion were performed, I am uncertain how to evaluate the concept of "severe and long lasting" physical health damage. Whether physical injury is "severe" and "long-lasting" is a subjective judgment, which varies with the perception and individual circumstances of the patient; whether loss of a finger is "severe," for example, may be perceived differently by a pianist or a truck driver. In this sense, whether a particular condition is "severe" and "long lasting" is not a judgment which a physician can make, and they ordinarily do not make medical judgments in such terms. Physicians are trained to make medical judgments about whether a patient faces statistically significant risks to her health, and what the nature of those risks are; evaluation of the appropriate treatment for a pregnant woman is based on what risks she is willing to incur, in light of the alternative treatments of her condition (e.g. therapeutic abortion, drugs) available.

8. Pregnancy is not a disease. It usually results in changes in a woman's system none of which, singly or together, in their usual form would make an abortion "medically necessary" or "medically indicated." Normal health problems in pregnancy include breast tenderness, increased vaginal discharge, decreased resistance to colds, mild anemia, edema, constipation, shortness of breath, decreased tolerance of exercise. For women with special health problems, however, these "normal" conditions can become exacerbated, or can themselves exacerbate pre-existing conditions. Women with severe classic (iron-deficiency) anemia, for instance, incur significantly higher morbidity and mortality than do women who are only mildly anemic because of the pregnancy. Women with bronchitis, emphysema, asthma, or who are heavy smokers, are statistically more likely to develop pneumonia, and require hospitalization, than are women with normal "shortness of breath." It is women

who run a significant risk that their other health problems will be exacerbated by pregnancy, or who have statistically significantly greater morbidity and mortality rates than the norm, for whom abortion is "medically necessary" or "medically indicated."

9. In judging what abortions are "medically necessary," the actual circumstances of the patient and her likely future behavior are essential considerations. Theoretical alternatives to abortion are not considerations if they are not actually available to the patient. A pregnant woman with varicose veins, for instance, can substantially lower any risk she faces with complete bedrest. This is not an alternative for a woman, such as plaintiff Jane Doe, with small children. A more extreme example is that of women drug addicts, who often do not seek out any medical care at all during pregnancy. Their continued drug use, combined with malnutrition and a complete absence of medical care, increases their mortality and morbidity rates—and the risk of fetal damage—several fold over the norm. In considering whether an abortion were "medically necessary" for such a woman, a physician would have to weigh the possibility that she could terminate her drug use and receive regular medical attention against the actual likelihood that she would do so.

10. Even a pregnant woman with health problems such as those described in paragraph 6, who desires to and does cooperate with her physician, can only somewhat increase her chances for avoiding death, or damage to her health. Even women who are able to and do cooperate completely—and women who do not want to be pregnant are less likely to fall within this category—have increased morbidity and mortality rates simply because the course of a patient's illness is neither altogether controllable nor altogether predictable.

11. Low income women with health problems have higher morbidity and mortality rates from pregnancy than do similarly situated women with higher incomes.



(a) Low income women tend to be less well-nourished. It is not uncommon for low-income women to be anemic because of pica (ingesting non-nutritious substances such as clay or Argo starch), a phenomenon considerably less common to middle—and upper-income women.

(b) Routine care for pregnancy includes being seen by a physician once a month for 6½ months, once every three weeks through 8 months, once every 2 weeks through 9 months, and once a week thereafter. High risk care means being seen by a physician once every two or three weeks for seven months, and once a week thereafter. Such frequent visits—with immediate hospitalization as needed—would be the minimum care required for women with health problems such as those described in paragraphs 6, 8, and 9.

(c) Low income women tend to have less access to adequate medical care. Unless they are being seen at a High Risk Pregnancy Center, such as Michael Reese, their doctors are less likely to have hospital privileges, or to have them at hospitals which are equipped to treat high-risk pregnancies. It is my experience that such women often are routinely referred by their doctors to Cook County Hospital when crises occur. It often is not impressed upon them, or they do not comprehend, the seriousness of their condition, and thus they often do not seek or receive hospital care until serious damage to their health has been done.

(d) These problems of low-income women are exacerbated with adolescents, who tend not to be emotionally mature enough to realize the implications of pregnancy or to commit themselves to the care it requires. While intensive high risk care can lessen their problems, such care is not available to, or is not sought out by many indigent pregnant adolescents.

12. (a) Both at Michael Reese and in my private practice, I have had occasion to treat numerous adolescent and older women who were victims of statutory and forcible rape. A

substantial number of my patients did not report the crime to the police (or to any public health or other law enforcement agency). This was because they experienced such feelings as fear, shame, embarrassment, and guilt. In my professional opinion, it would be improper medical care for a physician to withhold medical care (including abortion) from a rape victim because she did not report the crime to the police. Requiring such victims to speak to the police would only increase the emotional pain and trauma attendant upon the rape.

(b) An adolescent often will not realize she is pregnant until more than two months after conception. This is because menstrual periods in adolescents tend to be irregular, a tendency which is especially pronounced in the very young. Moreover, a denial mechanism tends to operate in adolescents, preventing them from admitting even to themselves that they are pregnant. As a result, it has been my experience that many adolescents do not seek out medical care for pregnancy—either abortion, or assistance in carrying the pregnancy to term—until more than two months after conception. At this point it is too late to comply with the "reporting" requirements of the new Illinois abortion-funding standards, even if "reporting" were not injurious to the health of the patient (which in many cases, it would be.)

Further affiant saith not.

/s/ DAVID ZBARAZ, M.D.
DAVID ZBARAZ, M.D.

SIGNED AND SWORN TO
before me this 21st day of
March, 1979.

/s/ JAMES B. HADDAD
Notary Public



**IN THE UNITED STATES DISTRICT COURT**
**FOR THE NORTHERN DISTRICT OF ILLINOIS**
**EASTERN DIVISION**

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| **DAVID ZBARAZ, M.D., et al.,** *Plaintiffs,* **v. ARTHUR F. QUERN, etc., et al.,** *Defendants.* | No. 77 C 4522 |

## MOTION FOR SUMMARY JUDGMENT

NOW COMES the defendant, ARTHUR F. QUERN, Director of the Illinois Department of Public Aid, by his attorney, WILLIAM J. SCOTT, Attorney General of the State of Illinois, and moves this Honorable Court grant him summary judgment, pursuant to Rule 56 of the Federal Rules of Civil Procedure on the grounds that:

1. Illinois policy governing the funding of abortions through its medical assistance programs as modified by this Court's injunction is not violative of plaintiffs' due process and equal protection rights under the Fourteenth Amendment to the United States Constitution, and:

2. The Hyde Amendment to Title XIX of the Social Security Act does not violate plaintiffs' rights under the Fifth Amendment to the United States Constitution.

3. There are no disputed issues of material fact.

WHEREFORE, defendant Quern submits his Memorandum of Law on the Constitutional Questions in support of this motion and requests this Honorable Court grant summary judgment in his favor.

Respectfully submitted,

/s/ WILLIAM J. SCOTT
WILLIAM J. SCOTT
Attorney General
State of Illinois

WILLIAM A. WENZEL
Special Assistant Attorney
General (Of Counsel)
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145-16-1584 (202) 633-2319

Honorable Alfred Y. Kirkland
United States District Judge
219 S. Dearborn Street
Chicago, Illinois 60604

Re: Zbaraz v. Quern, etc., et al.;
U.S.D.C., N.D.Ill., Civil
Action No. 77 C 4522

Dear Judge Kirkland:

In accordance with our status as the federal defendant-intervenor, please consider our Memorandum in Support of the Constitutionality of the Hyde Amendment, filed with the Court on March 22, 1979, to include a motion for summary judgment on our behalf. Unless otherwise instructed, I will assume that no further pleadings are required on our behalf.

Very truly yours,

BARBARA ALLEN BABCOCK
Assistant Attorney General
Civil Division

By: /s/ BARBARA B. O'MALLEY
Barbara B. O'Malley
Acting Director
Federal Programs Branch

cc: Robert W. Bennett, Esquire
357 East Chicago Avenue
Chicago, Illinois 60611

David Goldberger, Esquire
Roger Baldwin Foundation of
ACLU, Inc.
5 South Wabash Avenue
Chicago, Illinois 60603

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE NORTHERN DISTRICT OF ILLINOIS**
**EASTERN DIVISION**

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|---|---|
| **DAVID ZBARAZ, M.D., et al.,** ***Plaintiffs,*** **v. ARTHUR F. QUERN, etc.** ***Defendant.*** | No. 77 C 4522 |

## AFFIDAVIT

KENNETH H. WILSON, being duly sworn on oath, deposes and says that:

1. I am employed by the Illinois Department of Public Aid, in Springfield, Illinois, as Chief of the Bureau of Provider Services of the Medical Assistance Program.

2. It is the normal practice of the Department of Public Aid when it receives a bill for services rendered by a physician participating in the Medicaid Program, to pay that bill when the billing form is properly made out and any necessary documentation is included, without seeking further corroboration of the diagnosis. Only when there exists evidence of fraud or abuse is the bill further examined. Specifically, this general policy is followed when a physician makes an "APPLICATION FOR PAYMENT FOR ABORTION WHERE SEVERE AND LONG LASTING PHYSICAL HEALTH DAMAGE TO MOTHER WOULD HAVE RESULTED" and the form for payment therefore has been properly executed, including the required certification by two physicians.



3. Affiant says nothing further.

/s/ KENNETH H. WILSON
Kenneth H. Wilson,
Chief Bureau of Provider Services

State of Illinois
County of Sangamon

SUBSCRIBED AND SWORN TO
Before me this 3rd day of
April, 1979.

/s/ KATHY A. BADER
NOTARY PUBLIC

CENTER FOR DISEASE CONTROL,
MORBIDITY AND MORTALITY WEEKLY REPORTS
FEBRUARY 2, 1979, VOLUME 28, NO. 4

## Epidemiologic Notes and Reports

### Health Effects of Restricting Federal Funds for Abortion—United States

In August 1977 federal funds for abortion for Medicaid-eligible women were restricted. To measure the impact of this restriction on abortion-related complications, CDC initiated a hospital surveillance project in 13 states and the District of Columbia. No increase in abortion-related complications was observed in this surveillance project.

CDC also maintains nationwide surveillance of abortion-related mortality. Since October 1977, 3 deaths of Medicaid-eligible women have been reported in states not providing public funds for abortion: 1 of the deaths (*1, 2*) was directly related to the absence of public funds; the other 2 were indirectly related.

CDC's surveillance of abortion deaths began in 1972, but the hospital surveillance project was initiated in October 1977, following the issuing of regulations on August 4 to restrict funds for abortions to only those procedures necessary to save a woman's life. On February 14, 1978, HEW published regulations that broadened the indications for federal funding for Medicaid-eligible women to include situations in which 1. the woman's life would be "endangered" if the pregnancy were carried to term; 2. "severe and long-lasting physical health damage" to the woman would result if the pregnancy were carried to term, as certified by 2 physicians; or 3. the pregnancy resulted from statutory or forcible rape or from incest, providing that the incident was reported to a law enforcement agency or a government health service within 60 days of its occurrence.



### The Hospital Surveillance Project

Data on women coming to obstetric, acute-care facilities were collected from 24 institutions located in the District of Columbia and 13 states across the country from October 10, 1977, through June 10, 1978. Ten institutions were located in states in which, because of the absence of public funds, legal abortions might be less available: 14 were in states that were continuing to use state funds to finance Medicaid abortions. Out of the 3,157 abortion complications* reported through this hospital surveillance project, 7 occurred after admitted illegally induced procedures. In 3 other instances in which complications occurred, the women did not name the source of the abortion; for analytic purposes, it was assumed that these women also underwent an illegal or self-induced abortion.

None of these 10 complications occurred in women reported to be a Medicaid recipient. No abortion deaths related to either illegal or legal abortions were detected through the hospital surveillance. There was also no significant difference between institutions in funded and non-funded states in the proportion of Medicaid women with abortion complications over the 8-month period.

However, the restriction of public funds was found to be significantly associated with a later gestational age at the time of the abortion. In non-funded states Medicaid-eligible women with complications after legally induced abortions had a 1.9 week later mean gestational age than their counterparts in funded states ($p > 0.07$). Moreover, Medicaid-eligible women in non-funded states had a 2.4 week later mean gestational age than non-Medicaid-eligible women in the same states ($p < 0.01$); in funded states, Medicaid-eligible and non-Medicaid-eligible women had similar mean gestational ages.

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* An abortion complication included any illness related to either an induced or a spontaneous abortion that caused a woman to come to the acute-care facility at a participating hospital.

**Nationwide Mortality Surveillance**

Although no abortion-related deaths were detected through the hospital surveillance project, 3 abortion-related deaths of Medicaid recipients living in non-funded states have been documented since August 4, 1977, through CDC's epidemiologic surveillance of abortion mortality. One was directly related to the absence of public funds for abortion: a 27-year-old woman who died in a hospital on the Texas-Mexico border on October 3, 1977, from septic complications of abortion (*1,2*).

In the other 2 instances, the abortion-related deaths appeared to be indirectly related to the absence of public funding. In 1 case, the Medicaid-eligible woman delayed her procedure, in part due to medical reasons, in order to locate a facility which would perform a combined abortion and concurrent sterilization procedure with public funds. In the second case, a Medicaid-eligible woman was informed by 2 free-standing abortion clinics that she was too far advanced in pregnancy to allow the suction curettage procedure that she was planning to finance with private funds. After learning this, and because procedures performed later in pregnancy are more expensive, she attempted to induce an abortion herself, which eventually produced complications requiring a hysterectomy. She died from a pulmonary embolism 10 days after the hysterectomy.

*Reported by R. Bragonier, MD, Harbor General Hospital, Torrance, R. Sweet, MD, San Francisco General Hospital, San Francisco, Calif; W. Wilson, MD, Denver General Hospital, Denver, Colo; R. Hatcher, MD, Grady Memorial Hospital, Atlanta, Ga; N. Winn MD, Kapiolani Hospital, Honolulu, Hawaii; U. Freese, MD, Cook County Hospital, Chicago, Ill; R. Buchanan, RN, Johns Hopkins Hospital, Baltimore, Md; P. Darney, MD, Boston Hospital for Women, Boston, Mass; J. Tomakowski, Hutzel Hospital, Detroit, Mich; J. Batts, Jr. MD, Harlem Hospital, B. Lieberman, MD, Bellevue Hospital, New York, NY; D. Ucker, MD, Grant Hospital, Columbus, J. Palomaki, MD, University Hospital, Cleveland, Ohio; P. Kirk, MD, Emmanuel Hospital, Portland, Oreg; J. Polin, MD, University of Pennsylvania Medical Center, Philadelphia, R. Rajan, MD, Temple University Hospital, Philadelphia, D. Thompson, MD, Magee Womens Hospital, Pittsburgh, Pa; E. Gold, MD, Women and Infants Hospital, Providence, RI; L. Del Castillo, RN, Brownsville Hospital, Brownsville, J. Duenholter, MD, Parkland Hospital, Dallas, J. Furman, Thomason Hospital, El Paso, N. Golden, RN, Sierra Medical Center, El Paso, E. Pradoran, RN, McAllen Hospital, McAllen, Tex; S. Jones, MD, DC General Hospital, Washington, DC; and the Abortion Surveillance Br, Statistical Services Br, Family Planning Evaluation Div, Bur. of Epidemiology, CDC.*



Editorial Note: A pregnant Medicaid-eligible woman in a state which does not fund abortions has several alternatives. She may: 1. carry her pregnancy to term, 2. seek and qualify for a Medicaid-funded, legally induced procedure, 3. use private funds for a legally induced abortion, 4. seek a less expensive abortion from an unlicensed practitioner, and/or 5. attempt to abort herself. The hospital surveillance project was primarily designed to examine whether there would be an increase in self-induced or non-physician-induced abortions, since these options have the greatest potential for causing an increase in morbidity and mortality (*3*). For example, in 1972, before abortion became widely available in the United States, illegal abortion was responsible for 39 deaths; 5 years later in 1976, only 3 fatalities resulted from illegal abortion (*4*). However, no increase was noted, supporting the inference that Medicaid-eligible women are not choosing self-induced or non-physician-induced abortions to any large extent. CDC has initiated an active surveillance system for reporting of sporadic cases of illegal abortion complications when they occur—whether or not they are related to public funding.

CDC does not have data to explain the later mean gestational age after legally induced abortions in Medicaid-eligible women observed in non-funded states. For each week

of delay after the sixth week of gestation, the risk of complications after legally induced abortions increases approximately 20%; the risk of death increases approximately 50% (*5, 6*). Because of the rarity of complications associated with legal abortion, such an increase, if present, was not detectable in the hospital surveillance project.

**References**

1. MMWR 26:361, 1977

2. MMWR 27:71, 1978

3. Cates W. Jr, Rochat RW: Illegal abortion in the United States, 1972-1974. Fam. Plann. Perspect. 8:86-92, 1976

4. CDC: Abortion surveillance, 1976. Issued August 1978

5. Cates W. Jr, Schulz K.F., Grimes D.A., Tyler C.W. Jr: The effect of delay and method choice on the risk of abortion morbidity. Fam. Plann. Perspect. 9 266-278, 1977

6. Cates W. Jr, Tietze, C.: Standardized mortality rates associated with legal abortion: United States, 1972-1975, Fam. Plann. Perspect. 10:109-112, 1973



**IN THE UNITED STATES DISTRICT COURT**
**FOR THE NORTHERN DISTRICT OF ILLINOIS**
**EASTERN DIVISION**

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| **DAVID ZBARAZ, M.D., et al.,** ***Plaintiffs,*** **v.** **ARTHUR F. QUERN, etc., et al.,** ***Defendants.*** | No. 77 C 4522 |

**DEFENDANT QUERN'S MOTION**
**TO REQUIRE FEDERAL REIMBURSEMENT**
**FOR ALL MEDICALLY NECESSARY ABORTIONS**

NOW COMES ARTHUR F. QUERN, Director of the Illinois Department of Public Aid, by and through his attorney, WILLIAM J. SCOTT, Attorney General of the State of Illinois, and moves this Honorable Court for an order requiring the federal government to reimburse the State of Illinois for all medically necessary abortions performed under the terms of this Court's order of April 29, 1979 with respect to recipients of medical assistance under Title XIX of the Social Security Act, 42 U.S.C. § 1396 *et seq.* and in support states as follows:

1. Under this Court's opinion and order of April 29, 1979, Illinois is required to fund all medically necessary abortions for recipients of medical assistance under, *inter alia*, the medicaid program, 42 U.S.C. § 1396 *et seq.*

2. Under 42 U.S.C. § 1396b the Secretary of the Department of Health, Education and Welfare is obligated to reimburse participating states for amounts expended by such states as medical assistance for eligible public aid recipients. The amount of reimbursement due the State of Illinois for all medical assistance provided indigent persons approximates 50% of the total amount expended. 42 U.S.C. § 1396b(a)(6).

3. Defendant Quern's attorney in this case has been informed by both the Assistant United States Attorney assigned to this case in the Northern District of Illinois and the Assistant United States Attorney assigned to this case in the Justice Department in Washington, D.C., that the Department of Health, Education and Welfare does not intend to reimburse Illinois for any non-Hyde Amendment medically necessary abortions ordered by this Court to be provided by the State of Illinois to pregnant indigent women.

4. As the Medicaid Program is a program of cooperative federalism under which states are required to comply with federal requirements in order to qualify for federal financial participation, it is inequitable to require Illinois to bear the full cost of providing non-Hyde Amendment medically necessary abortions. Moreover, Illinois is entitled to such reimbursement under the expressed terms of Title XIX.

WHEREFORE, Defendant Quern respectfully requests this Honorable Court to include within the provisions of the final injunction and order to be entered in this case an expressed requirement that the Department of Health, Education and Welfare shall reimburse Illinois at its usual percentage



for all non-Hyde Amendment medically necessary abortions which Illinois will be required to perform under the terms of this Court's order.

Respectfully submitted,

/s/ WILLIAM J. SCOTT

WILLIAM J. SCOTT
Attorney General
State of Illinois

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**IN THE UNITED STATES DISTRICT COURT**
**FOR THE NORTHERN DISTRICT OF ILLINOIS**
**EASTERN DIVISION**

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| **DAVID ZBARAZ, M.D., MARTIN MOTEW, M.D., on their own behalf and on behalf of all others similarly situated; CHICAGO WELFARE RIGHTS ORGANIZATION, an Illinois not-for-profit corporation, and JANE DOE, on her own behalf and on behalf of all others similarly situated,** ***Plaintiffs,*** **v. ARTHUR F. QUERN, Director, Illinois Department of Public Aid,** ***Defendant,*** **and JASPER F. WILLIAMS, M.D. and EUGENE F. DIAMOND, M.D.,** ***Intervening Defendants,*** **and THE UNITED STATES,** ***Intervening Defendant.*** | No. 77 C 4522 |

**NOTICE OF APPEAL**

Notice is hereby given that Intervening Defendants Jasper F. Williams, M.D. and Eugene F. Diamond, M.D. appeal to the United States Supreme Court pursuant to 28 U.S.C. § 1252



from the following judgments, holdings, orders and decrees of this named action:

1. Appeal is taken from the Final Judgment and Order of this court entered in this action by Judge John F. Grady dated April 30, 1979 whereby this court adjudged an Act of Congress and certain Illinois statutes partially unconstitutional, enjoining the Illinois statutes in part. The laws so adjudged and enjoined state:

> "The Illinois Department, by rule, shall determine the quantity and quality of the medical assistance for which payment will be authorized, and the medical services to be provided, which may include all or part of the following: . . . but not including abortions, or induced miscarriages or premature births, unless, in the opinion of the physician, such procedures are necessary for the preservation of the life of the woman seeking such treatment, or except an induced premature birth intended to produce a live viable child and such procedure is necessary for the health of the mother or her unborn child." P.A. 80-1091; Ill. Rev. Stat. ch. 23, § 5-5 (1977 Supp.).
>
> "Nothing in this Article shall be construed to permit the granting of financial aid where the purpose of such aid is to obtain an abortion, induced miscarriage or induced premature birth unless, in the opinion of a physician, such procedures are necessary for the preservation of the life of the woman seeking such treatment, or except an induced premature birth intended to produce a live viable child and such procedure is necessary for the health of the mother or her unborn child." P.A. 80-1091; Ill. Rev. Stat. ch. 23, § 6-1 (1977 Supp.).
>
> "Aid in meeting the costs of necessary medical, dental, hospital, boarding or nursing care, . . . except where such aid is for the purpose of obtaining an abortion, induced miscarriage or induced premature birth unless, in the

opinion of a physician, such procedures are necessary for the preservation of the life of the woman seeking such treatment, or except an induced premature birth intended to produce a viable child and such procedure is necessary for the health of the mother or her unborn child." P.A. 80-1091; Ill. Rev. Stat. ch. 23, § 7-1 (1977 Supp.).

"None of the funds provided for in this Act shall be used to perform abortions except where the life of the mother would be endangered if the fetus were carried to term; or except for such medical procedures necessary for the victims of rape or incest, when such rape or incest has been reported promptly to a law enforcement agency or public health service; or except in those instances where severe and long-lasting physical health damage to the mother would result if the pregnancy were carried to term when so determined by two physicians." § 201 of Pub. L. 95-484, 92 Stat. 1586, Oct. 18, 1975, the "Hyde Amendment," an Act of Congress.

The Final Judgment and Order of this court herein appealed were fashioned pursuant to the Memorandum Opinion of this court in this named action by Judge John F. Grady of April 27, 1979, holding the "Hyde Amendment and P.A. 80-1091 are unconstitutional as applied to medically necessary abortions prior to the point of viability." Memorandum Opinion, at 13.

2. Appeal is also taken from the Judgment and Order of the United States Court of Appeals for the Seventh Circuit, dated February 13, 1979, in *Zbaraz et al.* v. *Quern et al.*, Nos. 78-1669, 78-1709, 78-1787, 78-1890, 78-1891, 78-2029, fashioned pursuant to the Opinion of the Seventh Circuit (dated and titled in the same manner as the Final Judgment and Order), where the Seventh Circuit held P.A. 80-1091 inconsistent with Title XIX of the Social Security Act (Medicaid), 42 U.S.C. § 1396 *et seq.*, insofar as P.A. 80-1091 failed to provide state funds for abortion to the extent 201 of Public Law 95-480 amended Title XIX.



3. Appeal is also taken from the Injunction issued by this court by Judge Alfred Y. Kirkland, in this named action, dated February 13, 1979, fashioned pursuant to the Mandate, Final Judgment, Order, and Decision of *Zbaraz et al.* v. *Quern et al.*, Nos. 78-1669, 78-1709, 78-1787, 78-1890, 78-1891, 78-2029 (7th Cir., Feb. 13, 1979), enjoining P.A. 80-1091 in the following manner:

> "Pursuant to the mandate of the Court of Appeals for the Seventh Circuit contained in its Judgment and Opinion of February 13, 1979, this Court hereby modifies its permanent injunction entered on May 15, 1978 to provide:
>
> This Court hereby orders that defendant be permanently enjoined from:
>
> (1) enforcing Ill. Rev. Stat. Supp. (1977) ch. 23, §§ 5-5, 6-1, 7-1 to deny payments under the Illinois medical assistance programs to plaintiffs Zbaraz, Motew, and any other recognized and legal medical providers, for the rendition of medical services to indigent pregnant women for: (a) abortions when the life of the mother would be endangered if the fetus were carried to term; (b) such medical procedures necessary for the victims of rape or incest, when such rape or incest have been reported promptly to a law enforcement agency or public health service; and (c) abortions in those instances where severe and long-lasting physical health damage to the mother would result if the pregnancy were carried to term when so determined by two physicians, or to deny such payments on behalf of any such indigent pregnant women for such abortions;
>
> (2) directing notice to any recognized and legal medical providers, or to persons receiving assistance under the Illinois medical assistance

programs, that the abortions and medical procedures described in para. (1) are not, or will not be, a covered (reimbursable) service under the Illinois medical assistance programs.

The remainder of the permanent injunction of May 15, 1978 and the definitions contained therein remain in full force and effect with the exception of para. (d) [containing the definition of "therapeutic"] which is hereby deleted."

Respectfully submitted,

JASPER F. WILLIAMS, M.D.
EUGENE F. DIAMOND, M.D.
Intervening Defendants

By: /s/ DENNIS J. HORAN

Dennis J. Horan
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**IN THE UNITED STATES DISTRICT COURT**
**FOR THE NORTHERN DISTRICT OF ILLINOIS**
**EASTERN DIVISION**

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| **DAVID M. ZBARAZ, M.D., et al.,** ***Plaintiffs,*** **v.** **ARTHUR F. QUERN, etc., et al.,** ***Defendants.*** | No. 77 C 4522 |

**AMENDED**
**NOTICE OF APPEAL**

NOTICE IS HEREBY GIVEN that Defendant, ARTHUR F. QUERN, Director, Illinois Department of Public Aid, by and through his attorney, WILLIAM J. SCOTT, Attorney General, State of Illinois, hereby appeals to the Supreme Court of the United States pursuant to 28 U.S.C. § 1252 from the Memorandum Opinion dated April 29, 1979, the Final Judgment and Order dated April 30, 1979, and docketed May 2, 1979, granting partial summary judgment for the plaintiffs, in the United States District Court for the Northern District of Illinois, Eastern Division, by the Honorable John F. Grady.

Defendant prays that the Final Judgment and Permanent Injunction be reversed.

The parties to this Order and the names and addresses of their respective attorneys are:

1. Plaintiffs-appellees who are represented by Robert W. Bennett, Esquire, 357 East Chicago Avenue, Chicago, Illinois 60611.

2. Plaintiffs-appellees, Zbaraz and Motew, who are represented by David Goldberger, Esquire, and Lois Lipton, Esquire, Roger Baldwin Foundation of ACLU, Inc., 5 South Wabash Avenue, Chicago, Illinois 60603.

3. Plaintiffs-appellees, Doe and Chicago Welfare Rights Organization, who are represented by Aviva Futorian, Esquire, Robert E. Lehrer, Esquire, Wendy Meltzer, Esquire, and James D. Weill, Esquire, Legal Assistance Foundation of Chicago, 343 South Dearborn Street, Chicago, Illinois 60604.

4. Defendant-appellant, Arthur F. Quern, Director of the Illinois Department of Public Aid, who is represented by William J. Scott, Attorney General, State of Illinois, William A. Wenzel, Special Assistant Attorney General (Of Counsel), 130 North Franklin, Suite 300, Chicago, Illinois 60606.

5. Defendants-appellants intervenors, Jasper F. Williams, M.D., and Eugene F. Diamond, M.D., who are represented by Patrick A. Trueman and John D. Gorby, Americans United for Life Legal Defense Fund, 230 North Michigan, Suite 515, Chicago, Illinois 60601.

6. Defendant-appellant intervenor, United States of America, which is represented by Jonathon Ginsburg, United States Department of Justice, Civil Division, 10th and Pennsylvania, N.W., Washington, D.C. 20530 and James Hynes, Assistant United States Attorney, 219 South Dearborn Street, Chicago, Illinois 60604.



Respectfully submitted,

/s/ WILLIAM J. SCOTT

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**UNITED STATES DISTRICT COURT**
**FOR THE NORTHERN DISTRICT OF ILLINOIS**
**EASTERN DIVISION**

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| **DAVID ZBARAZ, M.D., et al.,** ***Plaintiffs,*** **v.** **ARTHUR F. QUERN, etc., et al.,** ***Defendants.*** | Civil Action No. 77 C 4522 |

## NOTICE OF APPEAL

Notice is hereby given that the federal defendant-intervenor appeals to the Supreme Court of the United States, pursuant to 28 U.S.C. § 1252, from that portion of the Final Judgment and Order dated April 30, 1979, and docketed May 2, 1979, granting partial summary judgment to the plaintiffs, in the United States District Court for the Northern District of Illinois.

Dated at Chicago, Illinois, this 25th day of May, 1979.

Respectfully submitted,

/s/ BARBARA ALLEN BABCOCK/PB
BARBARA ALLEN BABCOCK
Assistant Attorney General

THOMAS P. SULLIVAN
United States Attorney



/s/ MARTIN B. LOWERY
MARTIN B. LOWERY
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# Supreme Court of the United States

**Nos. 79-4, 79-5 and 79-491**

JASPER F. WILLIAMS AND EUGENE F. DIAMOND,
*Appellants,*

*v.*

DAVID ZBARAZ, et al.;

ARTHUR F. QUERN, Director, Illinois Department of Public Aid, et al.;
*Appellants,*

*v.*

DAVID ZBARAZ, et al.; and

UNITED STATES,
*Appellant,*

*v.*

DAVID ZBARAZ, et al.

APPEALS from the United States District Court for the Northern District of Illinois.

The statements of jurisdiction in these cases having been submitted and considered by the Court, further consideration of the question of jurisdiction is postponed to the hearing of the cases on the merits. The cases are consolidated and a total of one and one half hours is allotted for oral argument.

November 26, 1979